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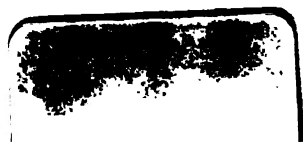
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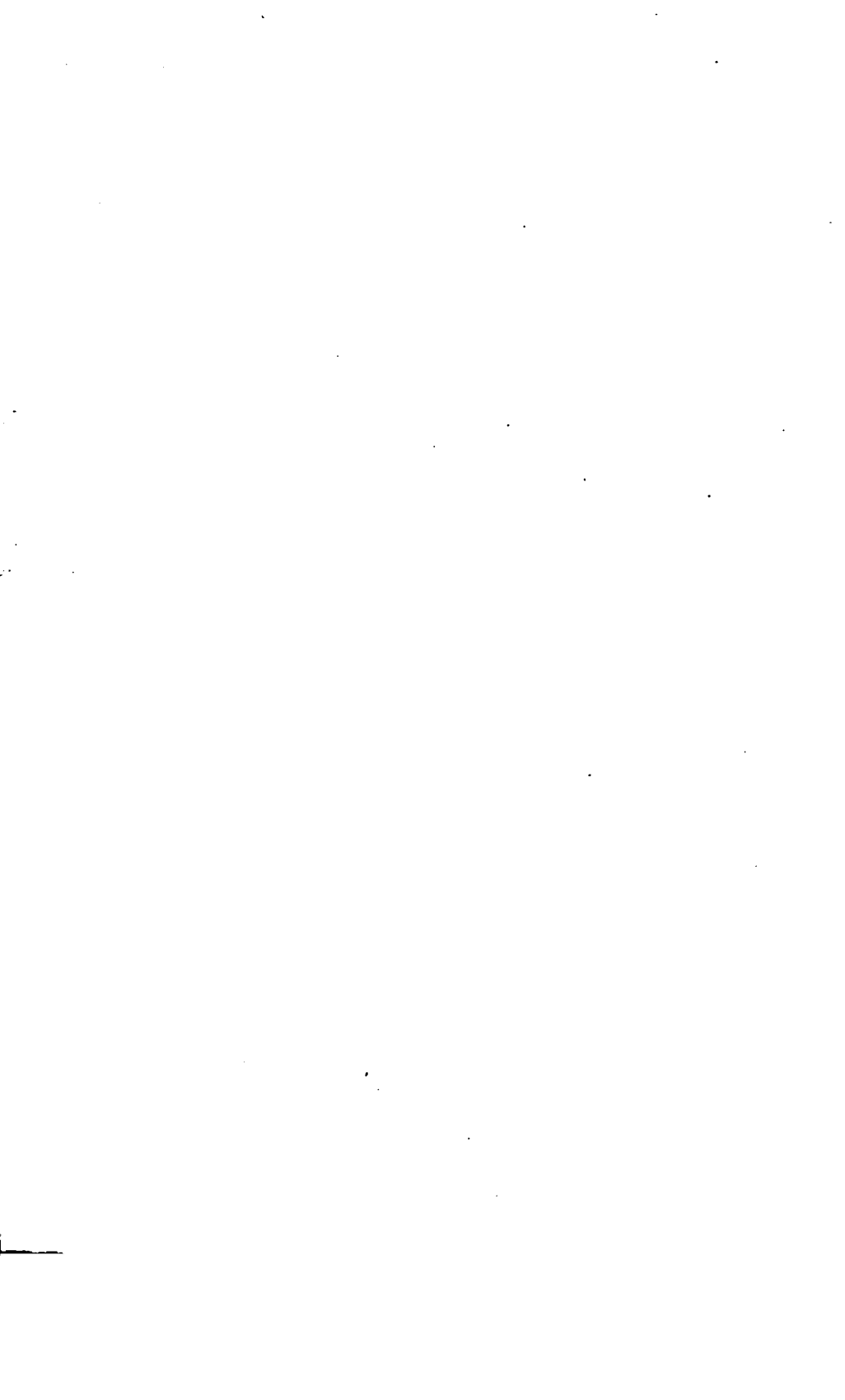
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NOTES OF CASES

IN

POINTS OF PRACTICE,

TAKEN IN THE

Court of Common Pleas

At WESTMINSTER,

From MICHAELMAS Term 1732, to HILARY Term 1756 inclusive.

Published with the Approbation of the JUDGES of the said COURT.

TO WHICH IS ADDED,

A Continuation of CASES to the End of the Reign
of King GEORGE the Second.

WITH

A TABLE, containing the NAMES of the CASES,

AND

An INDEX of the PRINCIPAL MATTERS.

By HENRY BARNES, *One of the Secondaries.*

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Easterby *against* Easterby. Mich. 7 G. 2.

In Dower. **A**N Issue was joined between the said Parties upon *Ne unques accouple en loyal Matrimonie*, and a Writ awarded to the Bishop; he returned the Evidence before him to prove the Marriage, which appeared sufficient, but did not positively return that the Parties were lawfully married. *Wright* for the Plaintiff moved for Judgment upon this Return; but the Court refused it, and told the Serjeant he might move again if he thought fit, giving Notice of the Motion, that the other Side might have an Opportunity of disputing the Sufficiency of the Return.

Note; The Return was afterwards amended, and the Fact certified instead of the Evidence; and Plaintiff had Judgment.

Freeman and his Wife, *Demandants*; Canham and others, *Tenants*. East. 8 Geo. 2.

In Dower. **W**RIGHT moved to set aside the *Grand Cape*, Proclamation not having been made fourteen Days before the Return of the Summons, according to the Statute 31 *Eliz. cap. 3. sect. 2.* the Summons was returnable *Craft, Animar.* and Proclamation made *October 27*, which was but six Days before the Return: The Court made a Rule to shew Cause, which was afterwards made absolute, no Cause being shewn.

King *against* The Bishop of Carlisle and the Master and Scholars of the University of Cambridge.

Trin. 11 & 12 Geo. 2.

In Quare Impedit. **W**YNNE for Defendants moved, That the Plaintiff *King* claiming a Right of Patronage might be examined upon Oath touching secret Trusts for Papists, pursuant to Stat. 12 *Ann. cap. 14.* and a Commission for such Examination was ordered to issue, directed to the three Prothonotaries, or any two of them.

Rutter *against* The Bishop of Hereford and the University of Cambridge. Trin. 16 Geo. 2.

In Quare Impedit. **T**HE Court ordered a Commission to examine touching secret Trusts for Papists, according to the Statute 12 *Ann.* to Commissioners in the Country, and directed the Prothonotary to strike Commissioners Names, and settle the Interrogatories. *Hayward* for Plaintiff; *Birch* for Defendants.

Foster *against* Kirkley. Trin. 26 & 27 Geo. 2.

In Dower. **T**HE Tenant after appearing to the *Grand Cape*, returnable the third Return of this Term, obtained a Rule, on *Peole's* Motion, to shew Cause why he should not have an Imparance; which was discharged on hearing *Draper* for the Demandants. In Dower *unde nihil habet*, or any other real Action, Imparance is not to be given; *Essoins* are sufficient Delay; real Actions are not within any of the Rules of Court concerning Imparances.

Amend.

Amendments.

Hampson *against* Chamberlain. Mich. 6 Geo. 2.

A Motion was made to amend the Entry upon Record, according to the Writs of *Sci. Fac.* and *Certiorari*, and the Returns thereof after Issue joined upon *Nul tiel Record*. The Court held that Amendments ought to be made by Common Law, without an Act of Parliament, where there is any thing to amend by; and therefore ordered the Entry upon Record to be amended, and made agreeable to the Writs of *Sci. Fac.* and *Certiorari*, and the Returns thereof, upon Payment of Costs, the Entry being made imperfectly by Misprision of the Clerk.

Clarke *against* Cotton, an Attorney.

A Bill was filed in this Cause against the Defendant as an Attorney of the Court; and the Bill by Mistake of the Plaintiff's Attorney did conclude, *& inde producit secllam, &c.* instead of *& inde petit Remedium, &c.* Upon Motion in the Treasury the Judges were pleased to order the Bill to be amended by striking out the Words *producit secllam*, and inserting instead thereof the Words *petit Remedium*, upon Payment of Costs to be taxed, *Nisi causa*; and the Rule was afterwards made absolute upon an Affidavit of Service. This Case is like that where the Curfitor may amend an Original by his Instructions, even in Substance; and in mere Form the Court will suffer him to amend his own Mistake. The Instructions here given to the Plaintiff's Attorney were to file a Bill, which he hath not done; he hath made it a Declaration by this wrong Conclusion, and not a Bill, according to his Instructions.

Cooper, an Attorney, *against* Younges. Hil. 6 Geo. 2.

MOTION was made to amend the Continuance on the Roll by striking out a General Return, and making it a Day certain; the Action being at the Suit of an Attorney, the Court at first made some Difficulty in granting the Rule for an Amendment, it be-

ing after Judgment on Demurrer; but upon Consideration, Continuances being merely the Acts of the Court, the Amendment was ordered.

Hale *against* Breedon. Trin. 6 & 7 Geo. 2.

THE *Placita* in the Record of *Nisi Prius* was of *Easter Term* last; the Declaration was in *Latin* of *Hilary*, entered with an *Alias prout patet*; the Plea was without Impar lance of the same Term in *English*. *Chapple* and *Eyre* moved in Arrest of Judgment, and obtained a Rule *Nisi*, which was afterwards discharged upon *Darnall's* shewing for Cause, that the Impar lance was entered upon the Plea-Roll, and that the Record of *Nisi prius* was amendable thereby.

Welland, an Attorney, *against* Pitts. Mich. 7 Geo. 2.

THE Bail-piece was ordered to be amended by making the Recital of the Writ of Attachment of Privilege agreeable to the Writ itself, *viz.* inserting the Return thereof, which was omitted in the Bail-piece, and in other Particulars. *Eyre* for Plaintiff; *Urlin* for Defendant.

Note; A Rule to bring in the Body had been served upon the Sheriffs of *London*; and Plaintiff insisted upon Costs on the Amendment of the Bail-Piece, but was told by the Court he must proceed upon his Rule against the Sheriff for Costs, if he was entitled to any; it was not proper to ask for Costs upon this Motion.

The Bail, immediately after the Amendment of the Bail-piece, justified themselves in Court, notwithstanding which Plaintiff afterwards moved for an Attachment against the Sheriffs for not bringing in the Body; which was granted upon Affidavit made of Personal Service of the Rule upon the High Sheriffs (no Cause being shewn.)

Sweetland *against* Beezley and Browne. Hil. 7 Geo. 2.

A *Sci. Fac.* against Bail, and all the Proceedings thereupon were ordered to be amended by the Record in the original Action, by inserting the Word *Merchant* instead of *Mercer*, being the Defendant's

Defendant's Addition, after Issue joined upon *Nut tiel Record*.
Chapple for Plaintiff; *Eyre* for Defendants.

Browne against Shipman.

UPON a common *Clausum fregit*, Plaintiff declared against Defendant as Administrator, and he pleaded that Administration was never committed to him; Plaintiff's Attorney moved in the *Treasury*, that Plaintiff might amend his Declaration upon Payment of Costs, by declaring against Defendant as Executor, which, upon hearing Defendant's Attorney, was ordered.

Sharp against Stacey. Easter 7 Geo. 2.

THIS was an Action of Debt upon a Recognizance of Bail, to which the Defendant pleaded Payment; the Plaintiff replied Non-payment, and concluded with an Averment, instead of *to the Country*, whereto Defendant demurred generally; and the Question upon the Argument was, Whether this was helped by the Statute for the Amendment of the Law, 4 & 5 *Anna*; the Court gave Judgment for the Plaintiff, *Nisi*; but the Plaintiff afterwards, upon advising with his Counsel, moved to amend upon Payment of Costs. *Birch* for Defendant; *Skinner* for Plaintiff,

Waldo against Harrifon, an Attorney.

BAYNES moved to amend the Writ of *Habeas Corpora Jurator* after Trial, returnable on *Wednesday* next after eight Days of the Purification, instead of *Wednesday* in fifteen Days of *Easter*: Court made a Rule to shew Cause, which was afterwards made absolute upon hearing Counsel on both Sides. *Chapple* and *Skinner* for Defendant.

Waldo against Harrifon. Trin. 7 & 8 Geo. 2.

THE Writ of *Habeas Corpora Jurator* being wrong in the Day of *Nisi prius*, had been ordered to be amended; and

Baynes afterwards moved to amend the *Jurata* in the Record of *Nisi prius* : The Court after Consideration were of Opinion, that as the Writ was amendable by the Statute 5 Geo. and was amended, and the Day of *Nisi prius* thereby rightly appointed, the *Jurata*, which is not an Award of the Court, but only to annex the Proceedings, and is wrong by Misprision of the Clerk, ought to be amended and made agreeable to the Writ; and the Amendment was ordered.

Taylor against Bramble. Mich. 8 Geo. 2.

Plaintiff obtained a Rule to shew Cause why his Declaration should not be amended on giving an Imparlance; upon shewing Cause, it appeared that Defendant had demurred and given a Rule to join in Demurrer, and therefore Plaintiff must pay Costs, and cannot amend on giving an Imparlance. Rule absolute on Payment of Costs.

Williams against Jones and another. Easter 8 Geo. 2.

THIS Cause was tried at *Nisi prius* before the Lord Chief Justice, and a Verdict taken by Mistake of the Associate generally for Plaintiff against both Defendants, instead of finding Defendant *Edward Jones* Not Guilty; as to the other Defendant, a Verdict was found for the Plaintiff, Damages 200*l*. Plaintiff moved that the Return of the *Postea*, as to *Jones*, might be amended; which was ordered on the Chief Justice's Report, and hearing Counsel on both Sides. The Return of the *Postea* is the Act of the Chief Justice, and must be made as it ought to be: It was urged by Defendant's Counsel, that the Verdict as to the other Defendant, was contrary to Evidence; but be that so or not, the Verdict being right in Part cannot be set aside. *Darnall* and *Wright* for Defendants; *Eyre* for Plaintiff.

Southam against Jennings. Mich. 9 Geo. 2.

THIS was a *Testat' Capias* from *London* into *Oxfordshire*, and Bail put in thereon with the Filazer of *London*: Plaintiff by Mistake declared in *Oxfordshire*, and afterwards moved in the *Trea-*

jury to amend by declaring in *London*, according to his Writ ; which was ordered upon Payment of Costs, though after Plea pleaded.

Deacon *against* Vivian. * Easter 9 Geo. 2.

In the Treasury. **A** Judgment by *Non Inform'* was signed Dec. 22, by Virtue of a Warrant of Attorney, dated Oct. 31, in *Michaelmas* Term last, and the Roll was filed generally of said *Michaelmas* Term. A Writ of Error was brought, and afterwards Plaintiff's Attorney moved to amend the Record according to the Fact, by inserting at the Top of the Roll from the Day of St. Martin in fifteen Days, in *Michaelmas* Term, in the 9th Year, &c. to prevent the Judgment's having Relation to the Effoin-Day of the first Return, which would have vitiated it, the Day laid in the Declaration on a *Mutatus* being Oct. 31. (the Date of the Warrant of Attorney;) and upon hearing the Attornies on both Sides the Amendment was ordered.

Cartwright *against* Gardiner.

SKINNER moved for the Plaintiff to amend the Issue-Roll by striking out the Award of the *Venire facias* by *Decem tales*, and awarding the common *Venire facias*; this was opposed by *Hawkins* for Defendant; and there being nothing to amend by, the Court did not make any Rule.

Coates *against* Midgley. Trin. 10 Geo. 2.

In Prohibition. **T**HE Declaration was ordered to be amended by a Judge; but the Amendment not being warranted by the Suggestion, or the Acts of the Spiritual Court, the Order was discharged. *Chapple* for Defendant; *Eyre* for Plaintiff.

Foster *against* Blackwell. Easter 10 Geo. 2.

PARKER moved to amend the Judgment-Roll, by striking out that the Plaintiff ought to recover, and inserting that the Plain-

tiff do recover, after a Writ of Error brought, & *in nullo est errat* pleaded, which was ordered on Payment of Costs, provided Defendant do not farther prosecute his Writ of Error; but if he proceeds in Error, without Costs. *Parker* for Plaintiff; *Chapple* for Defendant.

Scrape against Rhodes. Trin. 10 & 11 Geo. 2.

On Special Verdict **T**HE Matter in Law had been argued, and in *Ejectionment*. the Court having taken Time to consider, *Skinner* for Plaintiff moved to enlarge the Demise, which was near expiring; but *Eyre* for Defendant not consenting, the Court declared they had no Power to enlarge the Demise without Consent.

Lee against Daniel. Hil. 11 Geo. 2.

BELFIELD moved to amend the Declaration after the Plea-Roll filed: *Draper* objected that the Motion ought to be to amend the Roll, and not the Declaration; that the Amendments prayed being very long, could not be made without defacing the Roll, which ought not to be suffered. *Belfield* replied, that a *Vacatur* might be marked on the Roll filed, or it might be taken off the File, and a new Roll of the same Number be filed in its Place; but *per Cur* that Practice is not warrantable, and the Amendments prayed being such as would greatly deface the Roll, the Motion was denied.

Harry against Bant.

BELFIELD moved for Leave to amend the Avowry by altering the Sum due for Rent, which was miscomputed: *Draper* opposed the Motion, Demurrer being joined, and the Cause in the Paper for Argument. *Per Cur*: Defendant must amend on Payment of Costs.

Jeane against Langton, late Sheriff of Somersetshire.

Defendant moved for Leave to amend his Return of *Re' fa' lo'* filed in *Mich.* Term 1735, by adding Pledges. In the *Replevin*

plevin Cause, Judgment went for Defendant in the Plaint for want of Plaintiff's declaring in this Court, and a *Retorn' habend'* was issued, and an *Elongat'* returned thereon: And now this Action was brought against the Sheriff for not taking Pledges: Defendant pleads he took Replevin Bond, whereto Plaintiff demurs. *Per Cur'*: The Pledges ought to be recorded in the Court below, no Affidavit is produced of that Fact, here is nothing to amend by. Rule to shew Cause for Amendment discharged. *Eyre and Draper* for Plaintiff; *Belfield* for Defendant.

Farmer *against* Burton. East. 11 Geo. 2.

AFTER Argument upon Demurrer, Plaintiff moved to amend the Declaration; which was granted, the Merits of the Cause not coming in Question upon the Argument, but only the Form of Pleading. *Parker* for Plaintiff; *Girdler and Hayward* for Defendant.

Woodman *against* Inwen. Trin. 11 & 12 Geo. 2.

AFTER Argument upon Demurrer, and a Rule for a farther Argument, Defendant moved to amend the Avowry by inserting three necessary Requisites to justify his Distress; but the Amendment was denied, the former Argument having been upon the Merits, and there not being sufficient Matter set out in the Avowry to amend by. *Urlin and Parker* for Defendant; *Eyre and Draper* for Plaintiff.

King, Executor, *against* The Bishop of Carlisle, the University of Cambridge, Lamb and Gibson. Mich. 12 Geo. 2.

In *Quare Impedit*. **B**OOTLE moved to amend the Original Writ and Declaration, by making the Plaintiff a Co-Administrator instead of Executor; he urged the Reasonableness of the Amendment from the Necessity of the Thing; if the Original cannot be amended, six Months being passed, a Lapse will incur. He cited *Cro. Eliz.* 119. *Rookby's Case*, *Cro. Car.* 74.
Turner

Turner against Palmer. 4 Lev. 12. 3 Lev. 347. *Fitzgibbon* 193. *The Dukes of Marlborough against Wigmore*; *Merrick against The Hundred of Ossulston*, Pasch. and Trin. 10 Geo. 2. in B. R. The Court made a Rule to shew Cause; *Skinner and Wynne* shewed Cause, and insisted, that all the Cases cited for the Amendment were of Misprisions where the Officer has mistaken his Instructions, and upon Affidavit and Examination of the Officer *ore tenus* in Court, Amendments have been made. *Skinner* cited *Turner against Peck*, Mich. 4 Geo. 2. in B. R. *Per Cur'*: The Doctrine of Amendment of Original Writs (which is not by Common Law, but *per Stat.* 8 Hen. 6.) is settled in the Books; 1st, No Amendment of an Original Writ can be made, unless for Nescience or Misprision of the Clerk. 2^{dly}, There must be something to amend by: In this Case both these Requisites are wanting. The Court will take Care that the Suitor shall not suffer by the Officer's Error; but had the Mistake been the Attorney's, the Party must be put to his Remedy against him: The Court could not amend it. Here the Writ is agreeable to the Instructions, so there is nothing to amend by. The Rule was discharged.

The King *against* Hartop, late Sheriff of Leicestershire.

AN Attachment of Contempt having issued against Defendant for not returning a Writ, he was examined upon Interrogatories; and *Belfield* moved for Defendant for Leave to amend his Examination upon the fourth Interrogatory; Defendant having by Mistake therein referred to his own Affidavit instead of an Affidavit made by other Persons. *Agar* opposed the Motion, and prayed that the Prosecutor might amend a Mistake in the Title of the Interrogatories. *Per Cur'*: Let the Title of the Interrogatories be amended, and let Defendant be re-examined on the fourth Interrogatory; the Amendment of the Interrogatories was to entitle them between *The King* and *Hartop*, instead of the Original Cause, wherein the Writ was not returned.

Browne against Hammond. Easter 12 Geo. 2.

AFTER Writ of *Capias ad satisfaciend'* executed, *Agar* moved to amend the Writ by the Record of the Judgment, making

making Defendant's Name *Edmund* instead of *Edward*, and obtained a Rule to shew Cause, which on Affidavit of Service was made absolute.

Mason *against* Littlehales, Attorney.

By Bill. **T**HE Court gave Leave to amend the Declaration by striking out the Words (*bring Suit*) and inserting (*prays Relief*) upon Payment of Costs, though the Court seemed to think the Amendment unnecessary. *Boote* for Plaintiff; *Hayward* for Defendant.

Fowke *against* Horabin and others. Trin. 13 & 14
Geo. 2.

AFTER a Verdict found for the Plaintiff, several Objections were made in Arrest of Judgment: The principal were, That tho' the Action was Trespass upon the Case, the *Jurata* at the Foot of the Record of *Ni. pri.* was in Trespass only. That instead of saying, unless the Chief Justice should come before on the 12th of *July*, it was said, unless he should come before the 12th of *July*. That two of the Defendants being Sheriff of *Middlesex*, the *Ve. fa.* was awarded to the Coroners, but by the *Jurata* the Writ was alledged to be delivered to the Sheriff to be executed. That the Writ of *Ve. fa.* instead of being made returnable in Court, was made returnable before the Chief Justice. And that the Declaration recited an Original against *James Brooke* and others, and counted against the said *John Brooke*. As to the first Objection, the Court held it to be helped by the Statute of Jeofails. As to the second Objection, by the Writ of *Ha. cor. Jur.* the Day of Trial was rightly appointed, and the *Jurata* is amendable by the Writ. As to the third Objection, the *Ve. fa.* appeared to be returned by the Coroners, and the *Jurata* is only wrong by Misprision of the Clerk. The Return of the *Ve. fa.* tho' defective, is within the Statutes of Amendment. And as to the last Objection, the Word *John* in the Declaration must be rejected, and then the Count will stand against the said *Brooke*, which must be the *James Brooke* before mentioned. The several necessary Amendments were ordered, and thereupon the Rule to stay the Entry of Final Judgment was discharged, and the

the Plaintiff's Attorney, who had made so many gross Blunders, was ordered to pay Costs. *Prime* and *Draper* for Defendants; *Wynne* and *Agar* for Plaintiff. *Vide Waldo against Harrison*. Trin. 7 & 8 G. 2.

Cook *against* Shone and others.

THIS was an Action brought against Defendants, Surveyors, &c. for building *Westminster* Bridge, for taking away and destroying Plaintiff's Timber, to the Value of 500*l.* and by the Act of Parliament for building the said Bridge, Plaintiff is confined to bring his Action within six Months, and to lay it in *Middlesex*. By Mistake of *Gillman*, Plaintiff's former Attorney, who now absconds, the Action was laid in *London* instead of *Middlesex*. And the Mistake was not discovered till after Plea pleaded and Issue joined. The Fact appeared to be committed on 22d *August* 1739, and the Action to be commenced within the six Months. Plaintiff now moved for Leave to change the *Venue* from *London* to *Middlesex*; which was ordered, upon Payment of Costs. If the Amendment could not be made, Plaintiff must lose his Remedy; he is now too late to bring a new Action. In an Action upon a Penal Statute the Court probably would not interpose, but in the Case of a Remedial Law, the Amendment must be made. *Skinner* for Plaintiff; *Prime*. for Defendant. 3 *L.v.* 347. *Beacroft against The Hundred of Burnham*.

Masters *against* Ruck.

In Error. **T**HE Teste of a Writ of *Certiorari*, by Mistake, was made in the 13th Year of our [Lord] instead of our [Reign]. Upon a Motion for Leave to amend the same, it was doubted whether the Court had Power to amend such a Writ, or not. In order to support the Amendment, *Prime* for Plaintiff cited the Statutes of Amendment, 8 *H.* 6. c. 8. and 14. *Ed.* 3. c. 6. and the Case of *Brooke and others against Cooper*, in *B. R. Trin.* 6 G. 2. to shew that the Teste of a Writ of Inquiry out of Term was amended; and an Anonymous Case in 3 *Ventris* 171. as to different Sorts of Amendments; and *Blackmore's* Case in the 8th Report. *Draper* for Defendant insisted, that this was such a Writ as could not be amended; and he cited the Case of *Heath*

Heath against *Paget*, 1 *Lev.* 2. to shew, that no Original Writ can be amended; and to shew that the Teste of a Writ of Error is not amendable, he cited the Statute 5 *G. c.* 13. But *Prime* by Reply argued, that this is not an Original but a Judicial Writ, therefore amendable by all the Statutes of Amendment. The Court doubted; and pending their Consideration, in *Trinity* Term 1740, the Amendment, by Consent of the Parties, was ordered, on Payment of Costs.

Christie against Huggins.

THIS was an Action brought by Plaintiff against Defendant for suffering Sir *Alexander Anstruther* to escape out of his Custody, when Warden of the Fleet; and Issue was joined in *Trinity* Term 11 *G.* and Plaintiff having by his Declaration, among other Things, shewn, that Sir *Alexander* was removed from the *King's Bench* by *Ha. cor.* tested 26th *June* 10 *G.* being the last Day of *Trinity* Term, returnable *immediatè*, before Mr. Justice *Dormer*, and by that Judge committed to the *Fleet*. It was (as Plaintiff thought) requisite to prove a Copy of the Entry of such *Ha. cor.* upon the Roll, with the Return thereto, and the Commitment of Sir *Alexander* thereon, at the Trial of the Cause. Therefore a Motion was made, *Easter* 12 *G. 2.* on Plaintiff's Behalf, that such a Roll might be filed; and a Rule was granted to shew Cause.

On Defendant's Behalf it was also moved, that the Roll on which the Issue between the Parties had been entered, might be taken out of the Bundle of Rolls in the Treasury, and vacated, and that the Clerk of the Treasury might be restrained from receiving any Roll in this Cause, without Leave of the Court. And a Rule *Nisi* was granted, upon Affidavits that several Searches had been made at different Times in the Treasury for that Roll, and that it was not then filed, and it likewise appeared, that a Caution had been given to the Treasury-Keeper against receiving this Roll. The Clerk of the Treasury and Treasury-Keeper were directed to attend, to inform the Court what the Practice is concerning the bringing in and filing of Rolls in the Treasury, and how the said Issue Roll came into the Bundle.

Upon Cause being shewn against the above Rules, in *Trinity* Term 1740, as to the Issue Roll it appeared, that the Clerk of the

the Effoins had made two different Files of the same Numbers of *Trinity Term*, and that neither the Clerk of the Treasury or Treasury-Keeper knew any thing of that Roll coming into the Treasury; consequently that it was in the Bundle when the Search had been made by Defendant: But as there was no Apprehension of there being two different Files of the same Numbers, this Roll was not found for want of searching that File, (where it really was) but the other. And as to the other Roll, it appeared that the Entry produced, which Plaintiff wanted to file, was made upon a Roll of *Michaelmas Term* 10 G. 2. that being the Term in which it was alleged Mr. Justice *Dormer* had delivered the Writ, &c. into Court to be recorded; and that an Entry had been made of the *Ha. cor.* Return and Commitment, upon a Roll of *Trinity Term*, when the Writ was tested, and that the same was filed among the Rolls of that Term, which the Court thought was an Entry of the proper Term: But such Entry not agreeing exactly with the *Ha. cor.* and it not shewing that Mr. Justice *Dormer* had on the first Day of *Michaelmas Term* delivered the Writ, &c. into Court, to be inrolled, the Court therefore discharged both the Rules to shew Cause, and ordered that the Entry of the Writ of *Ha. cor.* &c. upon the Roll of *Trinity Term* should be amended, by inserting (*cameram suam situat' in le Serjeants Inn in le Chancery Lane London*) those being the Words omitted in the Entry which were in the Writ; and that the following Words should be inserted at the Conclusion of such Entry, (*viz.*) *Quam quidem Commissionem idem Justic' Robertus Dormer Ar' postea scilicet vicefimo tertio die Octobris Anno regni dicti Domini Regis nunc undecimo per manus suas proprias deliberavit hic in Cur' de recordo irrotuland' ac irrotulat', &c.* *Skinner* and *Prime* for Defendant; *Agar* and *Draper* for Plaintiff.

Stone *against* Overton. Hil. 14 G. 2.

RULE to shew Cause why a new Record of *Ni. pri.* and *Ha. cor. Jur.* should not be made out and returned by the Associate, agreeable to his Minutes taken at the Trial, the old Record having been lost, made absolute. It was objected for Defendant, that the Names of the twelve Jurors who were sworn cannot now be known, (the Associate not having kept any Entry of their Names) so as to make a new Return. But the Objection was over-ruled; the Jurors are not now named in the Return of the
Record

Record of *Ni. pri.* or in the Final Judgment, nor were they before the late Ballotting Act, unless in Case of a *Tales*. *Draper* for Plaintiff; *Gapper* for Defendant.

Broadbent *against* Wilkes. Easter 14 Geo. 2.

Defendant mistook a Fact, and set out a Custom wrong; he applied to Mr. Justice *Parker* for Leave to amend, but Plaintiff not consenting, the Judge made no Order. Plaintiff signed Judgment, and before Enquiry executed, Defendant gave Notice of Motion: Defence was made on the Enquiry. *Per Cur'*: Let the Judgment and Enquiry be set aside, and let the Plea be amended on Payment of Costs, and Defendant's bringing 15*l.* Damages, found by the Inquisition, into Court. *Booth* for Defendant; *Draper* for Plaintiff.

Priddle *against* Skurray and others. Trin. 14 & 15 Geo. 2.

MR. Justice *Fortescue Aland* made an Order that Plaintiff should have Leave to amend his Declaration, in the Particulars to the Order annexed. Defendants moved to discharge the Order upon the Face of it for Precedent Sake. Particulars are the Substance of the Order, and ought to be inserted in the Body of it. Of that Opinion were the Court, and the Rule to shew Cause why the Order should not be discharged, was made absolute. *Belfield* for Defendants; *Burnet* for Plaintiff.

Anonymus. Hil. 14 Geo. 2.

PER *Cur'*: In an Action on a Penal Statute, Defendant cannot plead doubly. This Case is not within the Statute for the Amendment of the Law.

Ingham *against* Chishull and Noke. Easter 17 G. 2.

THIS was a joint Action on several Assumptions. *Chishull* pleaded Bankruptcy. *Noke* pleaded a former Recovery for the same Demand. After Judgment against *Noke* on *Nul tiel Record*,

cord, Plaintiff confessed *Chishull's* Plea to be true, and entered a *Nolle prosequi* as to him, pursuant to the Statute 7 Ann. Plaintiff made out his Writ of Enquiry in the same Manner as if the interlocutory Judgment had been against both Defendants; but by the Inquisition, Damages were found against *Noke* only. Defendant *Noke* moved to set aside the Writ of Enquiry and Inquisition, and obtained a Rule to shew Cause; pending which Rule, Plaintiff moved to amend the Writ, by striking out *Chishull's* Name after the *Taliter processum fuit*; and the Rule for the Amendment was made absolute, without Opposition. After which Amendment the Writ tallied with the Inquisition, and the Defendant's Rule was discharged. *Draper* for Plaintiff; *Skinner* for Defendant *Noke*.

Greenwood *against* Richardson, one, &c. Mich. 19
Geo. 2.

THE Bill was, by Mistake, entitled *Trin. 19 Geo. 2.* instead of 19 & 20. Defendant moved to stay Proceedings, and had a Rule to shew Cause; which Rule was discharged, and the Title of the Bill ordered to be amended, on Payment of Costs. Plaintiff alledged, that the Statute of Limitations would take Place if he was put to file a new Bill. But the Court paid no Regard to that. *Clarke against Cotton, one, &c. Mich. 6 Geo. 2.* was quoted, where the Bill was amended from *producit scilam* to *petit Remedium*; *producit scilam* signifies no more than that Evidence is ready, *petit Remedium* seems unnecessary. The Court have a different Controul over Original Writs issued out of Chancery, and Original Bills filed here. This *Vitium Clerici*, or *Nescience* of the Clerk of the Court, is amendable by his Instructions, and by the Entry of the Bill in the Prothonotary's Book of *Trin. 19 & 20.* An Original out of Chancery is amendable by the Curfitor's Instructions. This Case is not similar to a Declaration in Ejectment; the Title thereof is not amendable, there being nothing to amend by. *Hayward* for Plaintiff; *Draper* for Defendant.

Beaumont *against* Cofin, one, &c. Hil. 19 Geo. 2.

RULE to shew Cause on Plaintiff's Application, why Declaration should not be amended, by inserting in the Memorandum the true Day of proclaiming, *viz.* 28th *November*, (instead of 23d *October*, which was before the Cause of Action.) Rule absolute, on Payment of Costs. Defendant to have Time to plead *de novo*, pleading in Bar. *Boote* for Plaintiff; *Agar* for Defendant.

Driver, on the Demise of Scrutton, *against* Scrutton and others. Hil. 18 Geo. 2.

In Ejectment. **R**ULE to shew Cause why the Demise should not be amended in Point of Time discharged. This is never done without Consent. *Willes* for Plaintiff; *Prime* for Defendant.

Wynne, Esq; and Kynaston, Esq; *Demandants*, Thomas, Gent. *Tenant*, Apperly, Dr. of Physick, and Alatheia his Wife, *Vouchees*, by Attorney. Hil. 18 Geo. 2.

WRIT of Entry returnable. *Quinden Pasche*, Tested 2d April, last Summons returnable *Craftino Ascensionis Domini*, being 16th May; the *Dedimus Potestatem* to take the Vouchees Warrant of Attorney bore Teste 25th April, and the *Mittimus* 18th May. The Recovery was arraigned at Bar 5th May. Mrs. Apperly the Wife, a Vouchee, died 10th May, six Days before the Return of the Summons. A Writ of Error being brought, and the Death of the Vouchee before the Return of the Summons, assigned for Error in Fact, Application was made to this Court to amend the Teste and Return of the Writ of Entry, and a Rule to shew Cause. The Court, after hearing Counsel on both Sides, and Consideration, was of Opinion, That all Amendments must be consistent with Rules of Law, and there must be something to amend by. In this Case, the Vouchees by Law could not appear till the Return of the Summons; and the Power of Attorney given by Alatheia

thea to appear at that Day, was revoked by her Death in the intermediate Time. By Statute 3 H. 6. c. 12, Original Writs amendable if wrong by Misprision of the Clerk, or where there is any thing to amend by. Here is no Misprision of the Clerk; the Writ is made agreeable to his Instructions, and nothing to amend by. The Amendment prayed, is to amend in the first Instance. The Rule discharged. *Willes & al.* for Doctor *Apperly* and Demandants and Tenant; *Skinner & al.* for *Wynne*, Esq; and his Wife, entitled to the Estate in Remainder.

Beaumand *against* Stuart, a Prisoner. Hil. 20 Geo. 2.

RULE absolute, giving Plaintiff Leave to deliver a new Issue properly entitled; in the Title of the Issue already delivered, the Word (*George*) was omitted; it stood thus, *Hilary Term* 20th King the Second. *Wynne* for Plaintiff; *Boote* for Defendant.

Marks, Spinster, *by* Brimmer her next Friend. Trin.
21 Geo. 2.

Plaintiff's next Friend sworn to be a material Witness for Plaintiff, who was now of full Age: Plaintiff moved and had Leave to strike out *Brimmer*.

Davids, Spinster, *against* Wilson. Hil. 21 Geo. 2.

RULE to shew Cause why final Judgment on Verdict should not be amended *in particularibus*; after Writ of Error and Record transcribed, but the Transcript not carried into the King's Bench. The Amendments were, to insert the Words agreeable to the standing Form used by the Clerks of the Judgments; some other little Mistakes, which were *Vitium Clerici*; and to make a Juryman's Name *Marshall* instead of *Marshell* by the Panel, &c. to make the Record consistent; on reading *Postea Ha. cor.* and Panel. *Skinner* for Plaintiff; *Belfield* and *Poole* for Defendant.

Garway *against* Stevens. Easter 21 Geo. 2.

Plaintiff moved to add a new Count to his Declaration, which was of last *Michaelmas* Term, on Payment of Costs. Defendant objected, that by the Course of the Court a Count cannot be added after the second Term; which was agreed to be the Practice: But as Plaintiff might discontinue, and to save the Trouble of a new Action, the Rule for the Amendment was made absolute, on Payment of Costs of Plea and Application, and Defendant having Leave to plead *de novo*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Bird, Executor of Smith, *against* Foster the younger.
Trin. 21 & 22 G. 2.

In Assumpsit. **P**laintiff having laid his Action in *London*, and declared with a *Profert* of Letters Testamentary from the Bishop's Court at *Durham*, obtained a Rule to shew Cause why he should not amend the Declaration, by laying the *Venue* in *Northumberland* instead of *London*. On shewing Cause, the Court discharged the Rule, it not being usual to amend the *Venue* at Plaintiff's Instance, unless where the Action by Act of Parliament is confined to a particular County, (such as the *Westminster Bridge Act*, &c.) and Plaintiff by Mistake lays it in another County: Simple Contract Debts follow the Person of the Debtor, Specialties are Assets where found. In this Case, the Amendment prayed seems to be to make good an Administration, which probably is void in Law. *Bootle* and *Wynne* for Defendant; *Prime* for Plaintiff.

Bludwick and Wife, Executors, *against* Usborne, Executor. Same Term.

RULE to shew Cause why Defendant should not have Leave to add to former Pleas already pleaded, by Leave of the Court, two new Pleas, discharged. The Question was Matter of Title, and the Cause to be tried at the Sitting after Term. Defendant had Time to apply last Term, he is under no Surprise: Plaintiffs can't

now be prepared to answer new Matter. *Bootle and Poole* for Defendant; *Prime and Draper* for Plaintiffs.

Wood *against* Boon, Esq; having Privilege of Parliament. Mich. 22 Geo. 2.

POOLE moved to amend the Declaration by adding Pledges to prosecute, and a Memorandum making the Declaration agreeable to the Bill on Record, on Payment of Costs. Rule to shew Cause, which was afterwards made absolute.

Ring, *Demandant*; Bold, *Tenant*; Harrington, *Vouchee*. East. 22 G. 2.

WILLES for the Vouchee moved to amend the Recovery, by striking out *It is adjudged*, and inserting, *It is Considered*. Granted absolutely; the Amendment prayed relating to the Act of the Court in giving their Judgment.

Merefield *against* Hulls. Trin. 24 G. 2.

H*Abcas Corpus cum Causa* to remove Defendant to the Fleet, was made returnable before Lord Chief Justice at his Chambers, and Defendant was committed by the late Mr. Justice Fortescue *Aland*: Motion by *Agar*, to amend the *Ha. cor.* by making it returnable before the Judge by whom the Prisoner was committed. But *per Cur'*: The Amendment prayed is unnecessary. The Commitment is warranted by the Practice, and is similar to the *Ha. cor.* Act, 32 Car. 2. In the Absence of the Chief Justice, the other Judge had the same Power.

Lacy and Garrick *against* Barry. Easter 24 Geo. 2.

In Debt, for a Penalty in Articles of Agreement.

Defendant moved for Leave to amend his Plea, and for Oyer of the Articles, after Demurrer to the Plea, Joinder and Argument,

gument, and farther Day appointed. On shewing Cause, the Matter of Oyer was given up, as not prayed within Time, and as to it the Rule was discharged; but the Amendments tending to state Facts necessary to bring the Construction of an Act of Parliament, and the true Merits of the Case, before the Court, the Rule as to them was made absolute, on Payment of Costs. Amendments to be made within three Days; and if Plaintiffs demur again, Defendant to join in Demurrer immediately. *Prime* and *Bootle* for Defendant; *Willes* and *Poole* for Plaintiffs.

Murry *against* Bowen. Easter 24 G. 2.

DEclaration of *Hilary* last delivered the Evening before the Effoin Day of this Term, with an Impar lance. Defendant's Attorney, by Mistake, entered a Special Impar lance as for a Plea in Abatement, and then pleaded a Tender, to which Plaintiff demurred. Defendant moved, and obtained a Rule to shew Cause why he should not amend his Plea, by leaving out the Special Impar lance, and pleading as of last Term. On shewing Cause, it was urged on Plaintiff's Part, that in Abatement there can be no Amendment: But the Declaration having been delivered so late, (the last Minute) and Pleas of Tender being in Bar, and such as ought to be favoured, the Rule was made absolute, on Payment of Costs. *Poole* for Defendant; *Bootle* for Plaintiff.

Loggin, *Demandant*; Rawlins, *Tenant*; Pullen and his Wife, *Vouchees*.

THIS Recovery, suffered nine Years ago, was ordered to be amended, by putting the word (*Trul*) the Name of a Vill, into its proper Place, according to the Deed of Uses. *Trul* had, by Mistake, been put into the Recovery as an Advowson, not as a Vill where lands lay. It was objected against this Amendment, 1st, That the Estate was in Trustees at the Time of the Recovery, and consequently the Trustees not being Parties, there is no good Tenant to the *Præcipe*. 2^{dly}, That the Lands are of Customary Tenure, Part of the Manor of *Taunton-Dean*. 3^{dly}, That the Parties who suffered the Recovery were Volunteers, not to be considered as claiming under a Family Settlement, or as Purchasers

for a valuable Consideration. 4thly, That *Pullen's* Wife is dead, and a Recovery can't now be suffered to divest those in Remainder. The Court will not enter into the Question, Whether or no, in Equity, Recoveries of Trust Estates bar legal Remainders, or into the other Objections; when the Recovery is amended, *Valeat quantum, &c.* The Intention of the Parties is the Foundation for the Amendment. The Transaction appears to be fair, and without Fraud or Collusion. The Principle upon which the Court goes, is the Statute 8 *Hen. 6.* to amend the Misprision of the Clerk. A *Præcipe* is the Curfitor's Instruction for an Original Writ; a Deed of Uses is the Clerk's Instruction for a Recovery: This *Præcipe* and this Deed are the Things to amend by. *Mrs. Pullen* being dead, an Amendment is the only Remedy left. *Prime* and *Poole* for *Pullen*; *Willes* for Lord *Middleton* and his Lady; *Belfield* for *Ready* and his Wife, Claimants in Remainder.

Dryden, Clerk, *against* Langley. Trinity 24 & 25
Geo. 2.

In Replevin. **D**efendant had avowed for a Quit-Rent, and Issue was joined last *Easter* Term; Defendant moved, and obtained Rule this Term to shew Cause why he should not amend, by adding three Avowries for Quit-Rent payable at different Times, on Payment of Costs; which Rule (Plaintiff refusing to consent that Defendant might give the Matter in Evidence on the present Issue) was made absolute; Defendant rejoining *gratis*, and taking short Notice of Trial. *Draper* for the Avowant; *Belfield* for Plaintiff.

Tarrant, *Demandant*; Randal, *Tenant*; Sheppard, Esq; and another, *Vouchees*. Mich. 25 Geo. 2.

THE Recovery was ordered to be amended, by striking out the Word *Adjudged*, and inserting instead thereof the Word *Considered*, in the giving of Judgment by the Court. *Prime* for *Demandant*, *Tenant* and *Vouchees*.

Witton, Esq; *Demandant*; East, Gent. and Weddell, Gent. *Tenants*; Thomas Fairfax, Esquire, *Vouchee*; of Lands in *Clementhorpe* in the County of the City of *York*: Recovery of *Easter* 9th *William* 3d, Roll 195. *Winford's* Office. Entry returnable *Cro. Pur.* Summons returnable *Mens. Pasch.* Seisin returnable *indilatè*.

THE Court, on the Motion of Serjeant *Poole*, on the Part of *Elizabeth Fairfax* Heir of the *Vouchee*, ordered the Prayer of Seisin to be amended, and the Return of the Writ of Seisin to be perfected by the Clerk of the Return-Office, the proper Officer who makes the Return. This Writ was rightly directed to the Sheriffs of the City of *York*, but not returned in the Name of any Sheriff, tho' a mistaken Return in the singular, instead of the plural Number, was indorsed on the Writ: The Prayer of Seisin, and Return of the said Writ, were ordered to be first amended, and then the Roll and Exemplification accordingly. The particular Amendments were as follow; 1st, To amend the Prayer of the Writ of Seisin, by striking out (*Com.*) and inserting (*Civit.*); to amend the Return of the Writ of Seisin, by striking out (*mibi*) and inserting (*nobis*); by striking out (*feci*) and inserting (*fecimus*); by striking out (*prædict.*) and inserting (*infra specificat.*) and by adding the two Sheriffs Names; to amend the Entry of the Return of the Writ of Seisin, by striking out the Words (*Thomas Pulleyne, Armiger, then Sheriff of the County of York*) and inserting (*Ric^{us} Wood & Sam. Buxton, then Sheriffs of the City of York*); by striking out (*ipse*) and inserting (*ipsi*); by striking out (*sibi*) and inserting (*eis*); and by striking out (*fecit*) and inserting (*fecerunt.*)

Harrison, Chamberlain of London, *against* Potter.
Mich. 26 Geo. 2.

POOLE for Lord-Mayor, Aldermen and Sheriffs of *London*, moved to amend their Return of Defendant's Writ of *Hæc. cum Causa*. The Substance of the Return was the Action between the said Parties, in Debt, for the Penalty of a By-Law, brought

brought against Defendant for employing a Foreigner, (no Freeman of the City,) and the Custom to make By-Laws; but the Custom to employ Freemen, and not Foreigners, within the City, was omitted; which last mentioned Custom *Poole* prayed might be inserted in the Return. *Draper* for Defendant, submitted whether the Return was amendable, or not; especially, as another Rule touching the granting of a *Procedendo* was pending. Rule absolute to amend the Return.

Lord *Demandant*, *Biscoe Tenant*, *Ayles Esquire*,
Vouchee. Trin. 27 & 28 Geo. 2.

RULE absolute to amend the Recovery, by transposing the Names of Demandant and Tenant, pursuant to the Deed making a Tenant to the *Præcipe*. *Prime* and *Draper* for Demandant, Tenant and Vouchee; *Willes* for Sir *Thomas Rudge*, the Remainder Man intended to be barr'd. By the Recovery *Biscoe* had been Demandant, and *Lord* Tenant. By the Deed *Lord* was to be Demandant, and *Biscoe* Tenant.

Law against *Salisbury*, one, &c. Mich. 28 Geo. 2.

RULE absolute to amend Bill filed, and Declaration thereon against an Attorney, by striking out the Words [*commenced and*] next before the Word [*prosecuted*] on Payment of Costs. *Per Cur'*: The Bill is in our Power, as an original Writ is in that of the Court of *Chancery*. *Poole* for Defendant; *Prime* for Plaintiff.

Craghill and others *Plaintiffs*; *Pattinson* and Wife
and *Nicholson* and Wife and others *Deforciantes*.
Mich. 29 Geo. 2.

FINE levied in *Trinity Term Anno primo Georgii Regis*, was Ordered to be amended according to the Deed of Uses, by striking out [*Parochiâ*] and inserting [*Parochiis*] instead thereof, and by inserting [*et Melmerby*.] Motion made on behalf of *John Nicholson*, who claims Title to a Messuage and several Lands and Hereditaments in *Melmerby* in *Cumberland*, under said Fine and Deed of Uses,

Uses, as Nephew and Heir to *John Nicholson*, one of the Deforciant's; opposed by *Joseph Carleton*, who claims Title to such Mesuage, &c. (if not barred by the Fine) as Heir to *Mary* the Wife of said *John Nicholson* one of the Deforciant's.

Thornley against Hughes. Hil. 29 Geo. 2.

Defendant by Leave of the Court pleaded two Pleas, Not guilty, and a Special Justification. On the former Plea Issue was join'd; to the later Plea Plaintiff replied, Defendant demurred to the Replication, and Plaintiff join'd in Demurrer; Plaintiff made up the Issue (awarding contingent Damages as usual) and before Argument of the Demurrer, proceeded to Trial of the Issue, and obtain'd a Verdict. Defendant this Term moved for, and obtain'd a Rule to shew Cause why he should not amend the later Plea on Payment of Costs. The Court thought that the Application for the Amendment came too late, especially as it appear'd, that, before the Trial (*viz.*) 16 June last, Defendant had applied for the same Amendment, and then had a Rule to shew Cause, which Rule Defendant's Agent had waived by a Note in Writing signed by him directed to Plaintiff's Agent. The last Rule to shew Cause discharged. *Poole* for Defendant; *Wynne* for Plaintiff.

Tyrrell against Meen Adm. Hil. 30 Geo. 2.

RULE to shew Cause why Defendant's Plea being a special *Plene Administravit*, (pleaded two Terms ago) should not be amended by adding a Debt due from the Intestate, for Rent made absolute upon Payment of Costs. The Amendment to be made within two Days, and Defendant to take Notice of Trial for next Assizes. *Poole* for Defendant; *Prime* and *Martyn* for Plaintiff.

The Master and Fellows of University College in Oxford *against* the Bishop of Exeter and others.

In quare Impedit. **H**EWITT for Plaintiffs having Occasion to make a long Alteration in the Declaration, moved for Leave to withdraw the Declaration already delivered, and to declare *de novo*, and obtained a Rule to shew Cause, which

was afterwards discharged as unprecedented. He then obtained a Rule to shew Cause why Plaintiffs should not have Leave to amend their Declaration, putting the Amendments into the Rule: On shewing Cause upon the last Rule it appearing, That the Amendments, though very long, were not Matter of new Title, but related to the same Title made before under Lord *Arandell*, and that the Papers were in the late Mr. Serjeant *Draper's* Hands at the Time of his Death, who by Reason of Sickness had not finished the Declaration. The Rule for the Amendment was made absolute upon Payment of Costs; Defendant to rejoin *gratis*, and take Notice of Trial for next Assizes. *Poole* for Defendant.

Palmer against Cofins, one, &c. Trin. 33 Geo. 2.

RULE made absolute for Leave to amend the Bill filed against Defendant as an Attorney, by adding to the Plaintiff's Damages the Sum of 150*l.* on Payment of Costs. The Mistake was through Nescience of the Clerk. The Court is not tied up to the old Cases; Common Sense must govern. *Nares* for Plaintiff; *Wilson* for Defendant.

Hodgson Assignee of the Sheriff against Michell. Easter 33 Geo. 2.

UNDER Colour of a pretended Agreement by Plaintiff to stay Proceedings, Defendant had applied to stay the same; but the Agreement being denied, the Rule was discharged. Then Defendant desired to be let in to try the Merits of the Original Action on Payment of Costs; which was granted, adding (Plaintiff having been delayed of a Trial) That the Bail Bond should stand as Security; Plaintiff had applied for Leave to amend his Declaration on the Bail Bond, which Defendant insisted by Rule of the Court was not amendable; but that is a Mistake: There is no such Rule, Declarations in Actions on Bail Bonds may be amended as well as any other Declarations. The Court perhaps may have refused in some Instances to grant Leave to amend Writs of *Scire facias* against Bail, where by such Amendment the Bail might be deprived of the Advantage of surrendering the Principal,

Principal, as perhaps they might do in Case of a faulty *Scire facias* quashed, and a new one sued out. *Poole* and *Hewit* for Defendant; *Nares* and *Davy* for Plaintiff.

Arrest.

Johannet against *Lloyd*. Hil. 12 Geo. 2.

Defendant being arrested in returning from Attendance on the Court to justify his Bail, was ordered to be discharged. *Wynne* for Defendant.

Attachment.

Hanflow and Wife against *Roberts* and others. Mich. 7 Geo. 2.

A Motion was made by *Chapple* for an Attachment against *Constable* for acting as an Attorney without being sworn: The Court denied to make any Rule, a Penalty of 50 *l.* being laid upon Defendant by Act of Parliament.

Barton against *Baynes*.

D*arnall* moved to make a Rule absolute for an Attachment against one *Bridgwater*, an Attorney, for not delivering to his Client Indentures of a Fine, &c. pursuant to Mr. Justice *Fortescue's* Order, (which had been made a Rule of Court.) *Per Cur'*: No Demand of the Writings appears since the Judge's Order made a Rule of Court; and therefore take a Rule that a Demand of the Writings left at the Chambers of *Bridgwater* (who concealed himself) shall be a good Demand.

Gage *against* Gough. Easter 7 Geo. 2.

MOVED by *Baynes* for an Attachment against a Witness served with a *Subpœna*, that did not bring a Will with him to the Trial, which he had Notice to produce. *Per Cur'*: As there was no Rule upon the Register (the Witness) to produce the Will at the Trial, no Rule can be made on this Motion.

Miller *against* Vicaridge. Trin. 7 & 8 Geo. 2.

A Rule was made for an Attachment against the Sheriff of *Middlesex* for not returning a *Capias ad Respondendum*; whereupon the Sheriff caused Bail to be put in, and justified in Court, and moved to discharge the Rule for an Attachment upon Payment of Costs; the Court made a Rule to shew Cause, which was afterwards discharged upon hearing Counsel on both Sides; it appearing that the Parties had been before Mr. Justice *Fortescue*, who had made an Order by Consent, that Proceedings should be stayed on Payment of Debt and Costs to be taxed, and that the Plaintiff had been delayed two Terms; and the Counsel for the Sheriff refusing to consent to go before the Prothonotary on the Foot of the Judge's Order, the Court were of Opinion that the Rule for an Attachment ought to stand. *Corbet* for Plaintiff; *Chapple* for the Sheriff.

Hammond *against* Woolmer.

CAUSE tried at *Nisi prius*; Verdict for Plaintiff, subject to the Opinion of the Chief Justice, who ordered the Cause to be put in the Paper, and if Judgment for Defendant, Costs of a Nonsuit; on the Argument, *Per Cur'* for Defendant, before which Defendant died; moved by his Executor for an Attachment for Non-payment of Costs. Shew Cause.

Gale *against* Chapman. Mich. 8 Geo. 2.

A Rule was made in *Hilary*, sixth of his present Majesty, for an Attachment against the Plaintiff, unless he should pay a Sum of Money upon Notice of the Rule. The Money not being paid upon Service, *Goswell*, Defendant's Attorney, without farther Application to the Court to make the Rule absolute, took out an Attachment against Plaintiff. *Skinner*, on Defendant's Behalf, moved for an Attachment against *Goswell* for suing out the Attachment against Plaintiff irregularly. A Rule was made to shew Cause; but upon shewing Cause, though the Attachment against Plaintiff was irregularly issued, yet it appeared to be only a mere Mistake in Judgment, and that no Mischief was intended; and further, that it was meant as a Service to Defendant, *Goswell's* Client, who now makes the Complaint. The Rule was discharged. *Comyns* for *Goswell*.

Parr *against* Soames. Hil. 8 Geo. 2.

Thomas Hilton, one of the Jury-men, attended in Person, according to a former Rule of Court, but had made no Affidavit in Answer to the Charge against him. *Per Cur'*: He cannot be examined *viva voce*; therefore let there be a Rule to shew Cause why an Attachment should not issue against him.

Cooper *against* Sayer. Easter 8 Geo. 2.

WYNNE moved for an Attachment against one *Hodson*, for acting as Plaintiff's Attorney after he was forejudged. The Court made a Rule to shew Cause, which was afterwards made absolute, no Cause being shewn.

Walton *against* Mason.

A Rule was made that *A. B.* late Sheriff of the County of *York*, upon Notice of the Rule to him or his Under-Sheriff given, should pay a Sum of Money to Plaintiff; and upon an Affidavit of Service of the Rule upon *Bowes*, the Under-Sheriff, an Attachment
was

was granted: *Eyre* moved to discharge the Rule which was drawn up for an Attachment against the Under-Sheriff. *Per Cur'*: The Rule is wrong, though the Under-Sheriff was served with the first Rule, this Rule must be for an Attachment against the Sheriff: and for the future, let the Form of all Rules upon Sheriffs be, that the Sheriff shall do the Act required, upon Notice to his Under-Sheriff, as in *Banco Regis*.

Cave against Price. Trin. 8 & 9 Geo. 2.

WRIGHT moved for an Attachment against the Sheriff of *Middlesex* for not returning a Writ of *Capias ad respondendum*, upon Affidavit of Service of the Rule on the Under-Sheriff: *Per Cur'*, Be it so, the Attachment must be against the Sheriff, and the Service is proper upon the Under-Sheriff.

Arne against Neeler. Mich. 9 Geo. 2.

THE Court granted a Rule for an Attachment against the Sheriff of *Middlesex*, for not returning a Writ pursuant to a peremptory Rule, upon an Affidavit of Service of such Rule on *Benson*, who was sworn to act as Under-Sheriff, and not to be Under-Sheriff. *Eyre* for Plaintiff.

Ware, an Attorney, against Racket. Hil. 9 Geo. 2.

Plaintiff sued out an Attachment of Privilege, and indorsed it for Bail without filing any Affidavit of his Debt to warrant such Indorsement. Defendant complained of this to the Court, who made a Rule upon Plaintiff to shew Cause why an Attachment of Contempt should not issue against him: It appeared, upon shewing Cause, that an Affidavit of the Debt was actually made before the Writ sued out, but by Mistake was not filed. The Court discharged the Rule for an Attachment, and ordered Plaintiff to pay Costs, Defendant consenting to bring no Action. *Belfield* for Defendant; *Chapple* and *Glyde* for Plaintiff.

The King *against* Harries.

THE Attachment of Contempt was returnable the Day before the Term; *Chapple* moved to quash it, objecting that it ought to be returnable at a Day certain in full Term, and cannot properly be made returnable on any other Day: Where the Proceeding is by Original, the Party may appear on the Effoin-Day, or any of the three Days next following; but this Process must be returnable on a Day certain; and no Instance can be shewn in the *King's Bench* or *Common Pleas*, where such a Writ was returnable at a Day intervening the Effoin-Day and the first Day of the Term. *Wright* for the Prosecutor urged, That all Judgments relate to the Effoin-Day; and this is a judicial Writ; the Court is never adjourned on the Effoin-Day, but commences then and continues to the *Quarto die post*. The Writ was ordered to be quashed.

Webster, an Attorney, *against* Holme. Mich. 10
Geo. 2.

AN Attachment of Contempt was ordered against Plaintiff for inserting Defendant's Name in a Writ of Privilege, after it came to Plaintiff's Hands under Seal of the Court. This is such a Misbehaviour in an Attorney as the Court must punish, without putting the Party injured to prefer an Indictment for Forgery. *Eyre* for Defendant; *Chapple* for Plaintiff.

Townsend *against* Baker.

Defendant's Goods, which had been taken in Execution, were, by Rule of Court made on hearing Counsel on both Sides, ordered to be restored; Defendant afterwards, upon Affidavit that the Goods were not restored pursuant to the Rule, moved for an Attachment of Contempt, which was granted absolutely without Affidavit of Service of the former Rule, which being made by Consent, Plaintiff must take Notice of, and comply with at his Peril. *Chapple* for Defendant; *Eyre* for Plaintiff.

Langdell *against* Sutton. Hil. 10 Geo. 2.

AN Attachment was ordered against the Jurors for determining their Verdict by hustling Half-pence in a Hat; one of them had discovered the Matter, and sworn it; the Eleven others denied it upon Oath; but it was proved that four of them had confessed it. *Eyre* moved, that Proceedings on Attachment might be staid on Payment of Costs to both Parties, without the Attendance of the Jurors in Court, who lived in *Yorkshire*; and alledged, that only one of the Jurors attended in a like Case of *Parr* and *Soames*. *Per Cur'*: Let the Jurors all attend to be publickly admonished, that the Country may take Warning. *Chapple* for Defendant.

Shipway *against* Clark. Mich. 11 Geo. 2.

Defendant petitioned against Sheriff's Officers for Extortion, &c. praying Relief according to Statute 2 Geo. 2. and the Court made a Rule for the Bailiffs to shew Cause why an Attachment should not be issued against them, and not to answer the Matters complained of; the former having been the Method constantly used here, and the later against the Course of the Court. *Belfield* for Defendant.

Maurice, Esq; *against* Griffith. Hil. 12 Geo. 2.

MOTION for an Attachment against the Sheriff of *Merionethshire* for not returning *Test' Ca. Sa.* Shew Cause. *Skinner*.

Macleed *against* Marsden. Trin. 13 Geo. 2.

THE Question was, Whether a Rule to bring in Defendant's Body after *Capi Corpus* returned by the Sheriff of *Cheshire* ought to be discharged or not? It being suggested on Behalf of the Sheriff that Defendant was in Custody, and had remained in Gaol ever since the Arrest; but the Fact appeared otherwise, Defendant had been suffered to escape. *Per Cur'*:
Had

Had the Sheriff shewn Defendant to be in actual Custody, the Rule ought to be discharged; but as there is an Escape, the Rule should be obeyed, otherwise an Attachment must be granted. By Consent, Debt and Costs to be paid in a Month, with five Pounds for Costs of the Motions. *Prime* and *Hayward* for Sheriff; *Eyre* for Plaintiff.

Huffe against Fowke.

AGAR for Plaintiff moved for an Attachment against Mrs. *Wright* for not attending as a Witness at the Sitting after last Term in *Middlesex*, she having been regularly served with a *Subpœna*. The Court denied to make any Rule; it is never granted here: Plaintiff may bring his Action upon Stat. 5 *Eliz. cap. 9. sect. 12.*

Stephenfon against Brookes. Trin. 13 & 14 Geo. 2.

[*Wyat* against *Winkworth*, *Easter 1 Geo. 2. B. R.* *Hammond* against *Stewart*, *Mich. 8 G. B. R.* *Hopkins* against *Purser*, *Trin. 2 & 3 Geo. 2. B. R.* *Dallyson* against *Allen*, *Mich. 10 Geo. in Scaccario.*]

Plaintiff had obtained a Rule for one *Hall* of *Kingston* upon *Hull*, an Officer of the Customs, to shew Cause why an Attachment should not be issued against him, for not attending at *Guildhall, London*, to give Evidence, after having been served with a *Subpœna*; Plaintiff having been nonsuited by Reason thereof. It appeared, that five Guineas were tendered *Hall* for his Expences, but he being a fat unwieldy Man, and not able to travel on Horseback, insisted upon ten Guineas, and offered, upon Receipt thereof, to undertake the Journey by Coach. *Per Cur'*: There is not any Precedent produced of a Rule of this Court for such an Attachment, but the Party aggrieved has always here been put to his Action upon the Stat. 5 *Eliz. cap. 9.* Where sufficient Amends are tendered, and a Witness obstinately refuses to attend, or is corrupted, the Court of King's Bench have, and there would be great Reason for this Court to interpose. The Sum tendered must be according to the Countenance and Calling of the Witness: Five

D

Guineas

Guineas were not sufficient, and *Hall* had not Assurance that the Residue would be paid; if, after *Hall's* Arrival at *London*, Plaintiff had not thought fit to examine him, the Court would not have ordered Payment of more Money. Ten Guineas do not seem to be an unreasonable Demand. The Rule was discharged. *Draper* for *Hall*; *Prime* for Plaintiff.

George *against* Evans. Easter 16 Geo. 2.

Administrators of Defendant demands of Plaintiff Costs accrued in Defendant Intestate's Life-time, shewing Letters of Administration. An Attachment granted for Non-payment. *Skinner* for Plaintiff; *Boote* Defendant's Administrator.

The King *against* Lever, High Bailiff of Westminster, on the Prosecution of Isaac Tallon *against* Waldron. Easter 16 Geo. 2.

AN Attachment of Contempt issued forth against Defendant, for not bringing *Waldron's* Body into Court, pursuant to a peremptory Rule; and Defendant having been examined upon Interrogatories, it was referred to the Prothonotary (as usual) to examine whether he had cleared himself of the Contempt, or not. The Prothonotary reported the Matter specially; and the Fact appeared to the Court to be, That *Waldron* being confined in the Gatehouse Prison Westminster, for a Criminal Matter, was, by Leave of a Judge, charged there with a Bailable Action, in the following Manner: A *Capias ad respondendum* was directed to the Sheriff of *Middlesex*, who made a *Mandate* to the High Bailiff of Westminster, and Defendant was charged in Custody therewith, and afterwards escaped from the Keeper of the Gatehouse, which is the Prison for the Liberty of Westminster, to which Prison the High Bailiff is obliged to carry his Prisoners within twenty-four Hours after Arrest. The High Bailiff being called upon for a Return of the *Mandate*, returned *Cepi Corpus*, and that *Waldron* remained in the Custody of the Keeper of the Gatehouse. Both the Chief Bailiff and the Keeper of the Gatehouse are appointed by, and hold their Places under, the Dean and Chapter of Westminster, and both give Security

riety to the Dean and Chapter ; but the Keeper gives no Security to the High Bailiff.—The Court were of Opinion, that the High Bailiff had cleared himself of the Contempt, and ordered the Attachment to be discharged. The High Bailiff did every Thing in his Power to secure the Prisoner, and ought not to be criminally punished. *Respondeat Superior* extends to Civil Matters only. The Prosecutor may bring his Action for the Escape. *Draper* and *Ketelbey* for the Prosecutor ; *Boote* for Defendant.

Vaughan, one, &c. *against* Sawyer. Trin. 19 & 20
Geo. 2.

RULE made for an Attachment of Contempt against the Bailiff of the Liberty of *Holdernefs* in the County of *York*, for not returning a *Mandate* made by the Sheriff, on an Attachment of Privilege, pursuant to a peremptory Rule to return the same, within six Days Notice, without any Return of a *Mandavi Ballivo*, antecedent to the said peremptory Rule ; on an Affidavit of Service of that Rule, and an Affidavit of searching the Sheriff's Office, after the Expiration of the six Days, and that the *Mandate* was not returned ; all the Officers present reporting this to be the Practice. *Boote* for Plaintiff.

Richardson *against* Bailly. Mich. 23 Geo. 2.

THE Under-Sheriff of *Hampshire* shut himself up, and could not be personally served with a Rule to return the Writ of *Capias ad respondendum*. Rule, that leaving a Copy at his House shall be good Service. *Poole* for Plaintiff.

Brodie *against* Tickell. Hil. 24 Geo. 2.

AFTER a Nonsuit, Motion by Plaintiff against *John Gray*, Esq; for an Attachment for not attending as a Witness at theittings at *Nisi prius*. It did not appear that a *Subpoena* was personally served ; but Notice by Receipt of a *Subpoena* Ticket was admitted by Mr. *Gray*, who on Plaintiff's Application, before the *Subpoena* Ticket left at his Lodgings, had informed Plaintiff

that he knew nothing of the Matter in Question between the Parties, and could not give any Testimony for Plaintiff's Advantage. Mr. *Gray* for this Reason, in his Affidavit, endeavoured to excuse his Non-attendance, and said, that he would have attended the Trial notwithstanding he could not give any material Evidence, had he not been hindered by other urgent Business. The Court enlarged the Rule for Mr. *Gray* to shew Cause why an Attachment, till after a new Trial had; and declared, that in some Cases they will grant Attachments against Witnesses for not attending Trials, tho' hitherto the same has not been done. *Prime* for Plaintiff; *Willes* for *Gray*.

Friend *against* Hope. Trin. 25 & 26 Geo. 2.

Plaintiff obtained a Rule for *John Hunt*, an Officer to the Sheriff of *Middlesex*, to shew Cause why an Attachment should not be issued against him, for not attending the Trial at *Nisi prius* as a Witness on Plaintiff's Part, for Want whereof, Plaintiff made Affidavit that his Damages were lessened, 16*l*. But on shewing Cause, the *Subpœna* to testify did not appear to have been regularly served; for which Reason the Rule was discharged without Costs. *Willes* for Plaintiff; *Prime* for *Hunt*.

Attornies, Warrants of Attorney, &c.

Clarke, an Attorney, *against* Stone. Easter 6 Geo. 2.

For Fees, &c. **T**HE Court, upon reading the Acts of Parliament relating to Attornies and Solicitors, 3 *Jac.* 1. and 2 *Geo.* 2. made a Rule that Plaintiff should shew Cause why all Proceedings should not be stayed till he delivered Defendant a Bill of Costs.

Walton *against* Stanton. Mich. 7 Geo. 2.

D Efendant, after having been two Years in Custody in Execution at Plaintiff's Suit, moved to be discharged upon Pre-
tence that this Warrant of Attorney to confess Judgment was executed at a Time when no Attorney was present, and obtained a Rule *Nisi*. Plaintiff shewed for Cause that Defendant *Stanton* himself practised as an Attorney. Rule discharged. *Darnall* for Plaintiff; *Comyns* for Defendant. *Per Capital Jusfic'*, aliter, Where Plaintiff is an Attorney, he would then be more likely to impose upon Defendant.

Hil. 7 Geo. 2.

Seymour *Richmond*, an Attorney of this Court, having been elected a Bailiff of *Abington* in *Berkshire*, obtained a Writ of Privilege to excuse him from serving that Office. *Baynes* moved on Behalf of the Corporation, that the Writ of Privilege might be set aside upon Affidavits that *Richmond* was a Member of the Corporation, and had served several Offices there; and had taken an Oath to conform to the Orders of the Corporation. *Per Cur'*: This is not a proper Manner of disputing the Validity of the Writ; the Court will not advise the Corporation how they are to act with regard to paying Obedience to it, they must act at their Peril. No Rule.

Collins *against* Griffin. Trin. 7 & 8 Geo. 2.

COURT was moved against *Phelps*, Defendant's Attorney, for not acquainting Defendant that he had received Notice of Trial, whereby Plaintiff obtained a Verdict without Defence. It appeared upon shewing Cause, that this Omission was entirely owing to the Neglect of Mr. *Buckle*, Agent for *Phelps*: But the Court held that to be no Defence for *Phelps*, he is answerable to his Client, his Agent to him; the Party in this Case ought not to be put to his Action, but the Matter should be determined in a Summary Way. Let an Attachment go against *Phelps*.

Mich. 8 Geo. 2. November 13.

MR. *Thomas Allen*, an Attorney of the *King's Bench*, applied in the *Treasury* to be admitted an Attorney of this Court without Stamps; but upon looking into the Acts of Parliament, wherein no Provision is made for an Attorney of one Court to be admitted an Attorney of another without Duty, though there is a Provision for Solicitors of one Court of Equity to be admitted in other Courts of Equity, and for Attornies to be admitted Solicitors and Solicitors admitted Attornies, without Duty, the Judges refused to admit him without Payment of the Duty.

Bishop, Executrix, *against* Huggins. Hil. 8 Geo. 2.

Plaintiff's Testator recovered an interlocutory Judgment against Defendant, and died before the Execution of a Writ of Inquiry. The Judgment was revived by Plaintiff as Executrix, and a Writ of Inquiry was executed before Lord Chief Justice at Sitings; when Defendant agreed to pay Plaintiff 420*l.* for Damages and Costs: This Sum was paid into the Hands of Mr. *Boson*, Plaintiff's Attorney, who also had been concerned for Testator in this and other Causes, *Boson* paid Plaintiff 220*l.* and kept the remaining 200*l.* giving Plaintiff a Note to account for the Surplus, if any should appear, after Payment of his Bills of Costs. Plaintiff afterwards employed another Attorney, and applied to the Court against *Boson*, that he might pay the 200*l.* to her, deducting only such Costs as were due from her since the Time of her Husband's Death, when she became Plaintiff, and employed *Boson*, and obtained a Rule to shew Cause, which was discharged on hearing Counsel on both Sides; the Court being of Opinion that they ought not to interpose in this Case; but Plaintiff may bring her Action against *Boson*, if she thinks fit. *Eyre* for Plaintiff; *Chapple* and *Skinner* for *Boson*.

Hil. 9 Geo. 2.

ONE *Barnes*, an Attorney in *Cumberland*, had Orders from a Defendant to plead for him; and he sent Directions to Mr. *Eadnell*,

Eadnell, his Agent, so to do; but *Eadnell* neglecting to plead, Judgment passed against Defendant by Default. Defendant moved against *Barnes*, and a Rule was made upon him to shew Cause why he should not make Defendant Satisfaction, he being answerable for his Agent's Default. Upon shewing Cause, it appeared there was a just Debt due to Plaintiff of 44*l.* and the Costs, (had a Plea been pleaded,) would have been greatly increased, so that Defendant is benefited, and not prejudiced by suffering Judgment to go by Default. If Defendant could have made a just Defence, and no Debt had been due, in case of a gross and wilful Neglect, the Court would have punished the Attorney; but there's no Reason for it in this Case. Rule discharged. *Chaple* for Defendant; *Birch* for *Barnes*.

Roe against Doe. Mich. 10 Geo. 2.

In Ejectment on the Demise of Cooke. A Motion was made on Behalf of the Tenant in Possession against *Davis*, an Attorney, for appearing and pleading for him without Authority. It appeared that the Tenant in Possession was Tenant at Will to Infants, by Order of whose Guardian *Davis* had appeared and pleaded for the Tenant, and offered the Tenant Security to indemnify him. But *per Cur'*, a Defence cannot be made for the Tenant without his Consent: Let the Appearance and Plea be withdrawn. *Gapper* for Tenant; *Draper* for Lessor of Plaintiff.

Mr. L.'s Case. Hil. 10 Geo. 2.

L Had served an Apprenticeship to G. a Scrivener in the City, and also a sworn Attorney of this Court. By the Tenor of the Articles G. covenanted to instruct L. in the Art and Mystery of a Scrivener; and it appearing that G. during the Term of five Years specified in the Articles, had never practised as an Attorney, but acted as a Scrivener only. Application was made to Lord Chief Justice, and in the *Treasury*, that L. might be sworn an Attorney, which was refused, he not having served as Clerk to an Attorney; but as Apprentice to a Scrivener.

N. B. There was formerly the same Determination in the Case of a young Man who had served Mr. *Metcalf*, an Attorney and

Scrivener in *Wood-street*; *Metcalf*, during the Term of five Years specified in the Indentures of Apprenticeship, practised in both Capacities; but the Covenant in the Articles being to instruct the Apprentice in the Art of a Scrivener only, the Judges refused to admit him as an Attorney.

Sibthorpe against Adams. Trin. 10 Geo. 2.

BOOTLE moved for Leave to enter Judgment on an old Warrant of Attorney upon an Affidavit sworn by Plaintiff, who lived in *Ireland*, before a Commissioner of the *Common Pleas* there, of the due Execution of the Warrant of Attorney, that the Defendant was living, and the Debt unpaid: He produced also an Affidavit that the Plaintiff lived in *Ireland*; but the Court refused to suffer the Plaintiff's Affidavit (sworn as aforesaid) to be read.

Langley against Stapleton. Trin. 10 & 11 Geo. 2.

THE Plaintiff moved for Leave to change her Attorney, and to appoint Mr. *Umfrevile* instead of Mr. *Forrest*: And a Rule being made to shew Cause, *Forrest* made it appear that he had been at great Expence and Trouble, and had done his Client good Service; wherefore the Court thought it unreasonable that another Attorney should be appointed till *Forrest*'s Bill of Costs was settled and paid; and discharged the Rule. *Skinner* for Plaintiff; *Eyre* for *Forrest*.

Still against Still. Mich. 11 Geo. 2.

DEfendant gave a Warrant of Attorney to enter Judgment at the Suit of Plaintiff *John Still* and one *Susanna Still*, deceased. The Judges in the *Treasury* gave Leave to enter Judgment at the surviving Plaintiff's Suit, upon his Affidavit of the due Execution of the Warrant of Attorney, and that the Debt was unpaid, and the Defendant alive.

Farrill *against* Head. Trin. 11 & 12 Geo. 2.

Defendant being sued as an Attorney by Bill, pleads in Abatement that he is not an Attorney. Plaintiff moved to set aside the Plea, and had a Rule to shew Cause; but it appearing on shewing Cause by Certificate from the Clerk of the Warrant that the Defendant was forejudged five Years ago, and that Forejudger still remains in Force, the Rule was discharged. *Per Cur'*: Defendant is totally deprived of Privilege, pending a Forejudger. Plaintiff may reply as he pleases, and traverse the Fact, which is triable by the Record, or demur if he thinks the Plea bad. The Plea is sworn to be true, and seems not to be frivolous.

Butler *against* Pincet.

Hayward, for Plaintiff, moved for an Attachment against *Phelps* for acting as an Attorney, and pleading pending a Forejudger, and a Rule was made to shew Cause. The Day before Cause was shewn, *Phelps* applied to Mr. J. Fortescue Aland, and obtained an Order (without Summons) to be restored to his Privilege (without Payment of Costs) upon entering a common Appearance at the Parties Suit by whom he was forejudged: And it not appearing that *Phelps* had any Notice of this old dormant Forejudger obtained seven Years ago, the Rule was discharged. *Eyre* for *Phelps*.

Hayme *against* Hayme. Mich. 12 Geo. 2.

DRAPER moved on the usual Affidavit (of Warrants being duly executed, and Parties living) to enter Judgment on a Warrant of Attorney thirteen Years old, and obtained an absolute Rule. *Per Cur'*: Where the Warrant is twenty Years old, or upwards, the Rule must be to shew Cause.

Hillier *against* James.

RULE to shew Cause why Plaintiff's Bill of Costs should not be taxed. Discharged, the whole Demand appearing to be
for

for conveyancing Business; and Plaintiff must recover upon a *Quantum meruit*. *Comyns* for Plaintiff; *Draper* for Defendant.

Coppendale against Sunderland. Hil. 12 Geo. 2.

MOTION by *Agar* to enter up Judgment on an old Warrant of Attorney: Plaintiff being a Lunatick did not swear the Money unpaid; but another did, who had received the Interest upon the Bond for three Years, ever since Plaintiff was Lunatick. *Cur'*: Let Judgment be entered up.

Barnes against Ward. Mich. 13 Geo. 2.

RULE to shew Cause why Judgment and *Fieri Facias* should not be set aside, and Restitution, no Attorney being present at the Execution of the Warrant to enter Judgment whilst Defendant was in Custody. It appeared that one *Eversden* who had served a Clerkship, (and was sworn an Attorney soon after the Execution of the Warrant, and before the first Motion made) was present; but this was held insufficient, the Rule made absolute; and Prothonotary directed to settle Satisfaction as to the Goods sold, which could not be restored in Specie. *Prime* for Plaintiff; *Agar* for Defendant.

On Behalf of *Heaton*, an Attorney. Mich. 14 Geo. 2.

THE Court, after hearing Council for *Heaton*, and for the Deputy-Lieutenancy who opposed his Motion, made the Rule absolute for a Writ of Privilege, to excuse *Heaton* from serving in the Trained-Bands of the City of *London*, the Service being personal.

Mr. John Moody's Case. Trin. 16 Geo. 2.

IN the Treasury Chamber 22d June, *Mr. John Moody* of *Havant* in the County of *Southampton* had been, at his own Instance, struck out of the Roll of Attornies, and was put into the Commission of the Peace, and made a Commissioner of the Land-Tax. He
now

now moved upon an Affidavit (setting forth his Reasons) to be restored to his Privilege; which was granted, he consenting to take no Advantage of any Action pending, if such there be.

**Lunn, an Attornēy, against Ascough, an Attornēy,
Mich. 16 Geo. 2.**

Defendant being indebted to Sir *John Wray* by Promissory Note, Sir *John* left the Note with *Lunn*, to put it in Suit; *Lunn* contrived to bring the Action in his own Name, as Indorsee, and arrested *Ascough* by Attachment of Privilege, and held him to bail, upon an old Notion, that Privilege cannot be pleaded against Privilege of equal Nature. The Attachment was a *Non omittas*, without an Attachment to warrant it. *Per Cur'*: Attornies Privilege is for the Sake of the Suitors; one Attornēy is not to sue another of the same Court by Process, but ought to do it by Bill. An Attornēy of the King's Bench ought to sue an Attornēy of this Court by Bill, and an Attornēy of this Court ought to sue an Attornēy of the King's Bench in like Manner. Plaintiff's Privilege ought not to draw Defendant into another Court. *Radcliffe* against *Bailey*, *Mich. 14 Geo. 2.* in *B. R.* the same Determination. Plaintiff and Defendant were both Attornies of that Court: (But not as to an Attornēy of one Court suing an Attornēy of another Court.)

**Vincent against Willoughby, an Attornēy. Easter
17 Geo. 2.**

Pending a Forejudger obtained against Defendant by another Person, Plaintiff sued him by Bill, as having Privilege of an Attornēy. Defendant moved to set aside the second Forejudger, insisting that his Privilege was suspended by the first; and Plaintiff ought to have sued him by Original in the common Way. Rule to shew Cause made absolute, without Opposition. *Eyre* for Defendant.

Launder, an Attorney, *against* Cokayn. Trin. 17 &
18 Geo. 2.

HELD *per Cur'*, That an Attorney of this Court may, for a Debt *bona fide* (but not a Note colourably indorsed without Consideration) sue an Attorney of the King's Bench by Attachment of Privilege, and the King's Bench Attorney would not be intitled to Privilege. But where the Attornies Plaintiff and Defendant are both of the same Court, the Proceeding must be by Bill, and not by Attachment, Defendant being intitled to Privilege.

Vilmott *against* Barry, Esq; commonly called Lord
Buttevant. Maguire *against* The Same. Mich.
20 Geo. 2.

WArrants to enter Judgments executed by Defendant when in Custody, in the Presence of Mr. *Periam*, an Attorney of the Court of King's Bench, declared by the Court to be sufficient, though *Periam* was not an Attorney of this Court. Other Matters were complained of, and the Rule to shew Cause why the Judgment should not be set aside, &c. was enlarged till next Term. *Skinner* and *Willes* for Defendant; *Prime* for Plaintiff.

Thomson, one, &c. *against* Rash, one, &c. Hilary
20 Geo. 2.

THE Plaintiff and Defendant being both Attornies of this Court, the Proceedings by Attachment of Privilege were stay'd. *Prime* for Defendant; *Skinner* for Plaintiff.

Coles, Executor, *against* Haden. Easter 20 Geo. 2.

MOtion for Leave to enter Judgment at the Suit of *Coles*, the Executor, on a Warrant of Attorney, the Words whereof extended to enter Judgment at the Suit of *Coles* the Testator, his
Heirs,

Heirs, Executors or Administrators ; the Court made a Rule to shew Cause, which was afterwards made absolute, on Affidavit of Service, (no Cause being shewn). *Boote* for *Coles*, Executor. The Serjeant quoted a Case in *Salkeld*, where a Warrant of Attorney to enter Judgment was given to a Feme Sole, and she having married before the Judgment entered, the Court gave Leave to enter Judgment at the Suit of the Husband and Wife.

Cocksedge, one, &c. *against* Rickwood.

OBjected for the Plaintiff, That the Affidavits *ex parte Def'tis* were sworn before *J. C.* and *A. F.* as Commissioners who were at that Time sworn to be Clerks or Agents to *Rash*, Defendant's Attorney. The general Rule extends only to Attornies themselves ; those Commissioners are not sworn to be Agents in this Cause. The Objection was over-ruled. It was said, but not sworn, that they were menial Servants, which the Court seemed to think would have been a sufficient Objection. *Prime* and *Willes* for Plaintiff ; *Skinner* for Defendant.

Laycock, who survived Kitching, *against* Garforth.
Easter 21 Geo. 2.

PRIME moved, on the common Affidavit, for Leave to enter Judgment at the Suit of *Laycock* the surviving Plaintiff, by Virtue of an old Warrant of Attorney to enter Judgment at the Suit of the two, and quoted a Treasury Rule made *sub silentio*, in the like Case, *Still* against *Still*, *Mich.* 11 *Geo.* 2. The Court's Opinion was, That the Power ought to be strictly pursued ; and that a Power to enter Judgment at the Suit of two Persons, doth not extend to the Survivor. The Interest of the Surviving Plaintiff cannot be pursued against the Authority. The Thing prayed is *Festinum Remedium*, which cannot be granted contrary to the Agreement of the Parties. The original Debt will remain as before the Warrant of Attorney given. Had the Application been made last *Hilary* Term, the Judgment would have related to a Time when both Plaintiffs were alive, and then perhaps the Court might have given Leave to enter Judgment at the Suit of the two. The Motion was denied. *Act* 8 & 9 *W.* 3. out of the Case.

Jones *against* Hayman. Trin. 21 & 22 Geo. 2.

PLaintiff, after having been struck off the Rolls of Attornies and Solicitors, carried on Proceedings in his own Name, alledging that he was still a Solicitor, and acting in the Name of one *Vaughan*, an Attorney, pursuant to a pretended written Authority; but not being able to verify these Pretensions, Rules were made absolute to set aside the Proceedings, with Costs. *Wynne* for Defendant; *Willes* for Plaintiff.

Trim *against* Slater. Trin. 22 & 23 Geo. 2.

TWO Judges had been formerly applied to for an Order to tax Mr. *Butler's* Bill, late Attorney for Defendant; the Bill, amounting to little more than 3*l.* had been paid in Parcels, some Part four Years ago, the last about twelve Months: Both the Judges refused to order a Taxation. Defendant moved that the Bill might be taxed, without disclosing what had passed before, and had a Rule to shew Cause, which was now discharged, with Costs. The Act of Parliament directing Taxation of Attornies Bills, supposes them unpaid; this appears to have been paid long ago. After Application to one Judge, (unless he had been doubtful) no Application ought to have been made to another Judge; after the Opinion of two Judges, neither of whom doubted, or directed a Motion, the Application to the Court wrong. *Agar* for Defendant; *Wynne* for *Butler*.

Whetham, Esq; Assignee, *against* Needham and Atkins. Trin. 24 Geo. 2.

Edward Owen, Plaintiff's Attorney, now a Prisoner in the *Fleet* under Process of Contempt from the Court of Chancery, having commenced this Action on the Bail-Bond, assigned since his Imprisonment, Defendants moved to set aside the Proceedings, with Costs, as contrary to the Statute 2 Geo. 2. making void the same; and obtained a Rule to shew Cause: But it appearing that the Original Action was commenced before *Owen's* Imprisonment, and there being an Exception in the Statute as to carrying on Proceed-

ings before commenced; the Court taking this under the Statute for Amendment of the Law, 4 & 5 Q. Anne, to be a Continuance of the Original Suit incorporated to make it effectual, discharged the Rule. *Willes* for Plaintiff and *Owen*; *Wynne* for Defendant.

Craven against Billingsley. Mich. 24 Geo. 2.

ON Complaint of one of Defendant's Bail, of his having been made liable to pay Plaintiff's Debt and Costs, by a Prosecution on the Bail-Bond, through the Misconduct of Mr. *Skinner*, an Attorney employed for Defendant, who had put in Bail in the Court of King's Bench, instead of this Court; and it not being controverted by *Skinner's* Council for want of proper Instructions, that he was an Attorney of this Court, a Rule was made absolute upon him to reimburse the Bail; but it afterwards appearing that *Skinner* was not an Attorney of this Court, and that he never acted by himself, or in the Name of another Attorney, in any one Instance in this Cause in this Court, the Rule was discharged. *Prime* and *Poole* for *Skinner*; *Hayward* for the Bail.

November 16th 1750. Declared by all the Judges in the Treasury Chamber, That if a Warrant of Attorney to enter Judgment be above a Year old and under ten Years old, Leave to enter Judgment may be given by a Treasury Rule; but if the Warrant be above ten Years old, the Court must be moved for Leave to enter Judgment. If the Warrant be under twenty Years old, the common Affidavit of due Execution of the Warrant, that the Debt is unpaid, and Parties living, is sufficient for an absolute Rule; but if the Warrant be above twenty Years old, the Rule must be to shew Cause, and served on Defendant.

*On the Part of Boyer and others, against John Allen,
an Attorney. Easter 24 Geo. 2.*

A Complaint having been laid before the Court against *Allen*, shewing that he had imposed on the Judge who ordered him to be admitted, by swearing to a Service of five Years to an Attorney of *Newcastle under Lyne, Com. Staff.* as an articled Clerk, tho' (as

(as suggested) he never lived at *Newcastle*, but constantly resided at *Loughborough, Com. Leic.* where he was an Under-School-master, and Collector of the Window-Light Duty; a Rule was made for *Allen* to shew Cause why he should not be struck off the Roll of Attornies. On shewing Cause, the Complaint was fully answered. It appeared, that though *Allen* resided sometimes at *Newcastle*, and sometimes at *Loughborough*, he was during his whole Clerkship constantly employed and instructed by his Master. The Rule discharged, with Costs. *Hayward, Bootle and Poole* for *Allen*; *Prime, Willes* and *Belfield* for *Boyer* and others.

Britten, who as well, &c. *against Teafdale.* Trin.
24 & 25 Geo. 2.

THIS was an Action brought on a Penal Statute (13th *Elizabeth*) against Defendant, for entering a fraudulent Judgment; and the Suit being by Original and *Capias ad respondendum*. Defendant, who was an Attorney of this Court, *rectus in Curia*, moved to stay the Proceedings, insisting that he ought to be sued by Bill. On shewing Cause it was urged, That this was a Prosecution for the Crown; and that Defendant, if intitled to Privilege, may plead it. But *Per Cur'*: These *Qui tam* Actions are never considered as the King's Causes. In Prosecutions at the Suit of the Crown, Defendants, tho' acquitted, can have no Costs; but in Actions *Qui tam* 'tis otherwise. The proceeding by Original is irregular. Rule absolute to stay Proceedings. *Prime* for Defendant; *Willes* and *Agar* for Plaintiff.

Todd against Todd. Trin. 25 & 26 Geo. 2.

In Banco Regis. **R**ichard Todd executed a Warrant of Attorney, dated 8 May 1746, to confess Judgment to *John Todd* the Elder, and *John Todd* the Younger. On the Warrant of Attorney, an Agreement was indorsed, reciting that *John Todd* the Elder and *John Todd* the Younger had entered into a Bond for the Payment of a certain Sum of Money to *W. S.* which was the proper Debt of *Richard Todd*; it was therefore agreed, that the Judgment should be a Security and Indemnity to *John Todd* the Elder and *John Todd* the Younger, against all Costs, Charges and Damages which they might sustain, on Account of the Bond which they had entered into.

John

John Todd the Elder died in the Year 1748, and by his Will made *John Todd* the Younger his Executor; Motion was made by Mr. *Williams* to enter up Judgment at the Suit of the surviving Plaintiff. The Court doubted whether it could be done, and directed him to enquire if there was any Instance where the like Motion had been granted; and if not, to speak to it as a Point of Law; which he afterwards did: And submitted, That the Difficulties which occurred in the present Case were,

1st, That bare Authorities must, by the Rules of Law, be strictly pursued; which could not be done in the present Case, the Warrant of Attorney being to appear to an Action to be commenced by two Persons, to receive a Declaration at the Suit of two Persons, and to confess a Judgment in such Action; which would not empower the Attorney to appear to an Action commenced by one Person only, and to receive a Declaration at the Suit of one only, and to confess Judgment in such Action.

2^{dly}, That by the Death of one of the Plaintiffs the Authority is determined.

In answer to which, he submitted,

1st, That where a Contract is made with two Persons, and one dies, the Survivor shall have the Benefit of it. In the present Case, *John Todd* the Younger is intitled to the Benefit of this Agreement, as Survivor.

2^{dly}, If a Joint Action is brought by two Persons, and one dies before Interlocutory Judgment, if the Cause of Action survives, the Action is not abated, but the Surviving Plaintiff may proceed against the Defendant.

This is in Case of Adversary Actions, and it will hold *a fortiori* in Amicable Actions, founded upon the Agreement of the Parties.

3^{dly}, That in the Execution of a Power of Attorney, it is sufficient and good if it be executed in Substance, and according to the Intention of the Parties, though not strictly and exactly according to the Letter. Feoffment on Consideration to re-enseoff the Husband and Wife, and the Heirs of their Bodies; Feoffee makes a Gift in Tail accordingly, and a Letter of Attorney to make Livery; before Livery made the Husband dies, yet the Attorney may make Livery to the Widow, and she shall take an Estate in Tail according to the Gift. *Moor* 280.

Feoffment of two Acres, one of them is before demised for Years; a Letter of Attorney to make Livery of Seisin of those two Acres,

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without

without saying, "or any Part thereof," the Attorney may make Livery of Seisin of that Acre only which is in Possession, and that will be good. *Moor* 280.

Co. Lit. 52. A Letter of Attorney to deliver Seisin to two, the Attorney may make Livery to one, in the Absence of the other. In the present Case, the Attorney may execute this Warrant in Substance, and agreeable to the Intent of the Parties; the Intent of the Parties was, that this Judgment should be a Security. By the Death of *Todd* the Elder, *Todd* the Younger becomes liable alone to the Payment of the whole Money due upon the Bond; he therefore ought to have the whole Benefit of the Indemnity. It never could have been the Intent of the Parties, that the Security should become a Nullity, upon an Event which made the Surviving Plaintiff liable alone to the Payment of the whole Money due upon the Bond.

4thly, That if an Attorney is empowered to do an Act to two jointly, and the Benefit of that Act, when done, will survive, if one dies, the Act shall be done to the Survivor.

Perkins, Title *Feoffment*, Sect. 192. If a Letter of Attorney be made to make Livery of Seisin unto two, and one of them dies before Livery of Seisin made, and the Attorney makes Livery of Seisin, according to the Deed, unto the other Feoffee who is living, it is good to him for all the Land. In the present Case, the Attorney is empowered to do an Act to two, the Benefit of which Act, if done, would have survived; and therefore the Attorney may execute that Power to the Survivor. This Case likewise shews, that the Death of one of the Persons to whose Benefit the Power is to be executed, is not, in Point of Law, a Revocation of the Authority.

5thly, That supposing, by the Event which has happened, this Warrant of Attorney is determined, or cannot be executed agreeable to the strict Rules of the Common Law; but in the present Case, it is submitted, That Proceedings upon Warrants of Attorney to confess Judgment, are to be considered as Proceedings founded upon the Agreement of the Parties, and the Judgment is to be considered as a common Security: That in Cases of this Sort, the Court exercises an Equitable Jurisdiction, in order to prevent the Party from being defeated of his Security, either by Fraud, by Accident, or Neglect.

A Power of Attorney is in its Nature revocable, though declared in the Instrument to be irrevocable. 8 *Coke* 82. *Vinior's Case*. But in the Case of a Warrant of Attorney to confess Judgment,

ment, though the Party revokes it, yet the Court will permit the Judgment to be entered. *Odes and Woodward, Lord Raymnd* 849.

A Power of Attorney determines by the Death of the Party who gives it, yet in Cases of this Sort, the Court permits the Attorney to execute the Power after the Death of the Party. *Andrews and Shewell, Raym.* 18. The Defendant gave a Warrant of Attorney to *A. B.* to confess Judgment in Debt to the Plaintiff, by *Non sum informatus*; Warrant of Attorney given at eight o'Clock in the Morning, and at ten o'Clock Defendant died: Judgment was afterwards signed. Defendants prayed to set aside this Judgment, but resolved, it was well obtained, it being for a just Debt. If a Warrant of Attorney is given in *Easter* Vacation, to confess a Judgment as of the next *Trinity* Term, and Defendant dies in *Trinity* Term, yet the Judgment may be entered up at any Time before the Effoin Day of *Michaelmas* Term. *Salk.* 87. *Comberbatch* 212. By the Practice of the Court, a Warrant of Attorney before the Effoin Day, to enter up Judgment as of the preceding Term, is good; yet there, the Judgment is considered as of the preceding Term, at which Time there was an Authority existing. Where a Judgment is confessed upon Terms, the Court will see those Terms performed. *Per Holt, C. J. Salk.* 400. 1 *Shower*, 91. If a Woman gives a Warrant of Attorney to confess Judgment, and then marries, you may file a Bill against Husband and Wife, and enter up Judgment against both, by the Practice of the Court. Ruled upon Motion. In this Case, the Marriage of the Woman was, in Point of Law, a Revocation of the Power; as where a Feme Sole submits to refer Matters to Arbitration, and afterwards marries, this is a Revocation of the Submission. 1 *Roll. Abr.* 331.

Warrant of Attorney was given to confess a Judgment to a Feme Sole, who afterwards married; in this Case, the Court made a Rule to enter up Judgment notwithstanding the Marriage. *Salk.* 117.

These two last Cases are liable to all the Objections with the present.

Submitted, That if a Warrant of Attorney was given to confess Judgment to two Executors, and one dies, the Judgment may be entered up for the Survivor.

Still against Still, *Mich.* 11 *Geo.* 2. *Notes of Cases in Points of Practice in C. P. fol.* 35. Defendant gave a Warrant of Attorney to enter Judgment at the Suit of Plaintiff *John Still*, and one *Susanna Still* since dead; the Judges in the Treasury gave Leave to enter

Judgment at the Suit of the surviving Plaintiff: But admitted, that in a subsequent Case that Court was of a different Opinion.

Easter 21 Geo. 2. Laycock against Garforth. Motion by Serj. Prime to enter up Judgment upon an old Warrant of Attorney, at the Suit of the surviving Plaintiff, upon the Authority of the Case of *Still and Still*; the Court denied the Rule, and were of Opinion, That the Power ought to be strictly pursued; and that a Power to enter Judgment at the Suit of two Persons, doth not extend to the Survivor. The Thing prayed is *festinum Remedium*, which cannot be granted contrary to the Agreement of the Parties. The original Debt will remain as before the Warrant of Attorney given. The Motion was denied, and said to be not within the Statute. 8 & 9 W. 3.

That the first Reason in this Case was contrary to the Doctrine laid down in the several Authorities in *Moor, Co. Littleton, Salkeld, Shower* and *Perkins*. That this cannot be against the Agreement of the Parties, for the Reasons before given. That the third Reason will not hold in the present Case, for this Judgment was only to be an Indemnity. That if the Plaintiff fails in the present Application, he is intirely without Remedy at Law.

The Court took Time to consider. Afterwards Lord Chief Justice declared the Opinion of the Court, That a Rule should be granted; and said, that the Benefit of this Agreement survived to the present Plaintiff; and that the Authority in *1 Shower 91.* was a stronger Case than the present.

Mould against Jackman. Trinity 24 & 25 Geo. 2.

Plaintiff moved in the Treasury, producing the common Affidavit, for Leave to enter Judgment on an old Warrant of Attorney, not expressing any Term or Time. Rule made to shew Cause, and afterwards absolute, on Affidavit of Service; no Cause being offered to the contrary.

Machin against Delaval. Hil. 26 Geo. 2.

IT being found by Verdict, on Trial of a feigned Issue directed by the Court, That the Warrant of Attorney to enter Judgment was given in Consequence of an Usurious Contract; the Court ordered

ordered the Judgment to be set aside, and said Warrant of Attorney, and the Bond whereon said Judgment was entered, to be delivered up, and Plaintiff to pay Costs of Application. *Prime* and *Willes* for Defendant; *Poole* for Plaintiff.

Gladwin *against* Scot. Easter 26 Geo. 2.

Defendant *Henry Scot*, and one *Thomas French* deceased, gave a joint Bond to Plaintiff for Payment of 127*l.* and Interest; and a Warrant of Attorney to enter Judgment against *me*, not *us*, though executed by two. *Willes* for Plaintiff moved, on the common Affidavit, for Leave to enter Judgment against *Scott* the Survivor. He quoted a Case in *Banco Regis*, *Todd against Todd*, where Leave was given to enter Judgment at the Suit of a surviving Plaintiff. Rule to shew Cause; which was afterwards made absolute, on Affidavits of Service, no Cause being shewn to the contrary.

N. B. The Case quoted is herein before inserted under this Title, p. 43.

Unwyn one, &c. *against* Robinson. Mich. 28 Geo. 2.

BOTH Parties were Attornies of this Court; Plaintiff sued Defendant by common *Capias*; Defendant moved to stay the Proceedings, insisting that he ought to have been sued by Bill, and that the Affidavit to hold him to Bail was intitled *Unwyn one, &c. against Robinson one, &c.* which is not agreeable to the Writ. Defendant had been formerly forejudged, but was restored to his Privilege before this Action brought. It appeared that Defendant had obtained a Judge's Order for Time to put in Bail, but that was not deemed a sufficient Waiver of his Objection to Plaintiff's Method of proceeding against him. Rule absolute to stay Proceedings without Costs. *Poole* for Defendant; *Willes* for Plaintiff.

Horsley *against* Shuter. Mich. 33 Geo. 2.

RULE made for Leave to enter Judgment on an old Warrant of Attorney upon Plaintiff's Affidavit of the due Execution of

the Warrant, and that the Debt intended to be thereby secured was unpaid, and an Affidavit of a third Person: That Defendant now resides in Ireland, and that Deponent saw him at Dublin 18th September last (1759) in full Life, and seeming good Health. After some Doubt as to the Proof of Defendant's being alive, (the two former necessary Matters being fully proved). The Court thought that Proof sufficient, Defendant residing in Ireland, 18th September is a reasonable Distance of Time past. Hayward for Plaintiff.

Award, Submission, &c.

Aspley against Crosley. Easter 7 Geo. 2.

D*ARNAL* moved, that Defendant might be discharged out of Custody at Plaintiff's Suit. Upon the Trial of this Cause a Juror was withdrawn by Consent, and all Matters in Difference between the said Parties were referred to Arbitrators, who made an Award, whereby Defendant was ordered to pay a Sum of Money to Plaintiff at a future Day; Defendant's Counsel insisted, that Plaintiff's only Remedy is now upon the Award, and if there had been any Bail in the Cause, it would have been lost, and therefore Defendant ought to be discharged out of Custody. But the Court were of Opinion, that the Award is not a final, conclusive, absolute Determination, but is liable to Exceptions, and no Provision being made by the Rule for Defendant's Discharge before Performance of the Award; and the Arbitrators not having ordered Defendant to be discharged, their Intention seemed to be, that all Things should remain *in statu quo* till Performance of the Award. No Rule,

Rawling against Wood. Easter 8 Geo. 2.

A Parol Award held good, and an Attachment granted for Non-payment of Money pursuant thereto. *Chapple* for Plaintiff; *Wynn* for Defendant,

Rudd *and* Coe. Trin. 8 & 9 Geo. 2.

SKINNER moved on Behalf of *Rudd*, that a Submission between the Parties contained in the Condition of Arbitration Bonds might be made a Rule of Court, and produced the Bond executed by *Coe*. *Per Cur'*: Be it so, *Coe's* Consent is shewn by the Bond executed by him, and the Motion is made on Behalf of *Rudd*.

Carter *against* Mansbridge. Easter 9 Geo. 2.

WRIGHT moved to make a Submission between the Parties a Rule of Court pursuant to the Statute 9 & 10 Will. 3. *Toller* objected, that the Agreement to make the Submission a Rule of Court was no Part of the Condition of the Bond, but was thereunder written, and not signed; but it appearing by Affidavit that the Subscription was made before the Execution of the Bond, it was taken by the Court to be Part of the Submission, as an Indorsement by Way of Defeazance is Part of the Deed; and the Submission was made a Rule of Court.

Dubois *against* Medlycott. Easter 10 Geo. 2.

CHAPPLE moved to make a Rule to shew Cause absolute for an Attachment against Defendant for Non-performance of an Award. *Eyre* for Defendant offered to object to the Award in Point of Law; but the Submission made a Rule of Court, being by Bond, *per* Statute 9 & 10 Will. 3. no Objection to the Award can be made after the first Term, and comes now too late. Rule absolute.

Gatliffe *against* Dunn. Easter 11 Geo. 2.

RULE of *Nisi prius* to refer, an Award made, and Motion for an Attachment for Non-performance. *Eyre* and *Umlin* for Attachment; *Comyns* and *Wright* against it, who insisted, that the Arbitrators had not pursued their Authority, because the Submission

confined the Award to be made in Writing indented, and the Award produced was not indented. *Cur'*: It is a perfect immaterial Objection, and just the same as if the Submission had said the Award should be made on gilt Paper; let an Attachment go.

Harrison *against* Oliver.

MOTION *per Eyre* for Attachment for Nonpayment of Money awarded under a Reference *per Regulam Cur'*. *Bootle* for Defendant shewed for Cause, that the Arbitrator, being by the Rule confined to state Plaintiff's Demand only, was debarred from the Consideration of Defendant's Demand on Plaintiff: That Defendant having brought his Action against Plaintiff, Plaintiff had pleaded the General Issue, and given Notice to set off his Demand under the Award. *Per Cur'*: It appears that Demand of the Money awarded was made, and Defendant in Contempt *June* 10. The Notice to set off was not till *June* 24. If Defendant pays the Money, it cannot be set off. Plaintiff refusing to consent to a Reference to Prothonotary, Rule was made absolute for Attachment, but ordered to stay a Month in the Officer's Hands.

Stephenson *against* Browning. Easter 12 Geo. 2.

WRIGHT came to shew Cause against an Attachment for Non-performance of an Award, and objected, *First*. That though the Award be proved executed, it does not appear when. *Secondly*, That the Costs ordered to be paid by Plaintiff were taxed by Prothonotary *Thomson*, who is, not named in the Award. And *Thirdly*, That no Release is awarded. *Eyre* for Defendant answered, that as there is no Affidavit to induce Suspicion, the Execution of the Award is sufficiently proved, that reasonable Costs of Suit are awarded to be paid, and though the Prothonotary be not named, he is the proper Person to tax those Costs; and that all Actions are by the Award directed to cease, which is an effectual Release. The Court thought the Objections sufficiently answered, and would have made the Rule absolute. But by Consent Plaintiff was ordered to pay 40*l.* 3*s.* being the Costs taxed, within two Months. It was said by the Court, that where the Objections arise upon the Face of the Award, they

may

may be made at any Time; but where the Party complains of Corruption or ill Practice, he must do it within the second Term.

Note; It was observed by Lord Chief Justice, that though the Costs are awarded to be paid *January 1*, it appears they were not taxed till *January 30*.

Dalling against Matchett. Mich. 14 Geo. 2.

MATTERS in Difference were, by Consent of Parties, referred to three Arbitrators, so as they, or any two of them, make an Award, &c. and an Award having been made by two in Plaintiff's Favour, Defendant moved to set it aside; objecting, that two had not a Jurisdiction without the third; and obtained a Rule to shew Cause. Upon shewing Cause it appeared, that the third Arbitrator had sufficient Notice of the Meetings of the other two, and might have been present if he would. *Per Cur'*: 'Tis agreed by both Sides, that if the third had met, two might have made an Award; two have a Jurisdiction, but must meet pursuant to Rules of Law. If the third had been present, his Reasons might have altered the Opinion of the other two; he is not therefore to be excluded by Fraud; nor are the two to act, without the third's having an Opportunity to be present; but where the third has sufficient Notice, as in this Case, and will not attend, the Meeting of the two is regular, and their Authority sufficient. The Rule discharged. *Skinner* and *Prime* for Plaintiff; *Belfield* and *Umlin* for Defendant.

Kettle against Grove, Heir, &c. Easter 15 Geo. 2.

On Bond. **A**T the Assizes Plaintiff had a Verdict for his Security, and Matters in Difference were referred to Arbitrators by Rule, who made an Award within the Time limited, whereby Defendant was ordered to pay Plaintiff 300 *l*. The Rule of Assizes was made a Rule of Court. And Plaintiff electing to proceed upon the Verdict, and not by Attachment of Contempt for Non-performance of the Award, moved for Leave to enter Judgment, and take out Execution for the Money awarded; and a Rule was made to shew Cause, and afterwards absolute, on Affidavit of Service.

Note;

Note. The Court thought this a proper Application ; and that Plaintiff had not a Right to enter Judgment without Leave of the Court. *Birch* for Plaintiff.

Tynte *against* Every.

A Rbitrators awarded Costs of Suit and of the Reference, to be taxed *per* Prothonotary. The Court ordered Costs to be taxed to the Time of the Reference, but not after. *Gapper* for Defendant ; *Draper* for Plaintiff.

Easter 16 Geo. 2.

UPON the Motion of Serjeant *Birch*, the Court made a Rule that *A. B.* a subscribing Witness to an Arbitration-Bond, should shew Cause why he should not make an Affidavit touching the Execution of that Bond ; and upon an Affidavit of Service, the Rule was made absolute.

Note ; This is the only Case wherein the Court interposed in this Manner.

Read *against* Garnett, an Attorney. Trin. 17 & 18 Geo. 2.

VERDICT for Plaintiff, for Security. Reference, by Rule, to three of the Jurors ; Award in Plaintiff's Favour. Rule obtained by Plaintiff for Defendant to shew Cause why *Postea* should not be delivered to Plaintiff, to take out Execution for the Money awarded. Objection by Defendant, That no Affidavit was produced of the due Execution of the Award, or of a Demand of the Money ; which the Court held to be as necessary as if the Motion had been for an Attachment for Non-payment of Money, The Rule was discharged. *Skinner* for Plaintiff ; *Willes* for Defendant.

Bail and Bail-Bonds, and Surrenders in Discharge of Bail.

Faget *against* Vanthiennen. Mich. 6 Geo. 2.

Recognizance of Bail was ordered to be amended by making it in an Action of Trespass and Assault *ad dampnum* 2000*l.* instead of 200*l.* *super assumptionem*. Two Actions were depending between the Parties, and Bail was put in to the Action *super assumptionem* before the Bail now amended was put in, which was intended to be in the Action of Assault, but by Mistake of the Filazer was taken in the other Action, contrary to the Instructions given.

Wife *against* Lawrence and others. Hil. 6 Geo. 2.

Defendants were taken on a *Capias in Withernam* after an *Ex-gate* returned on a *Pluries*; a *Capias* and *Alias* to warrant the *Pluries* appeared to be filed with the Filazer, but not returned; for want of which a Motion was made to discharge the Defendants, and the Court granted a Rule to shew Cause; but afterwards, upon shewing Cause, it appearing to be the constant Practice to sue out the *Capias Alias* and *Pluries* all at the same Time, the Rule was discharged; and thereupon Defendants moved to be bailed, and were told by the Court, the Plaintiff must first declare, and the Defendants plead *Non cepit*; which being done, the Defendants were admitted to Bail. The Bail were bound in the Penalty of 200*l.* each upon their Goods, &c. to be levied to the Use of the Plaintiff and S. his Wife, upon Condition that the Defendants shall appear *de die in diem* in this Court; and if Judgment be given against the Defendants, that the said Defendants render their Bodies in *Withernam* to remain in Custody until they render S. the Wife of the Plaintiff, and permit her to go at large.

Haward.

Haward *against* Nalder.

MOTION was made that a common Appearance might be accepted in this Cause for Defendant, the Affidavit to hold him to bail having been sworn before Plaintiff's Attorney as a Commissioner; and a Rule to shew Cause was obtained, but was afterwards discharged; it having been hitherto the constant Practice for Plaintiff's Attorney to take the Affidavit to hold to Bail, Practisers apprehending that no Action being commenced at the Time of swearing such Affidavits, they are not within the same Rule as Affidavits sworn before the Plaintiff's Attorney in Causes depending. It was said by the Court, that this Matter would be considered by all the Judges at their Meeting to settle the Practice, upon some Doubts that have arisen upon the Construction of the late Acts of Parliament.

Atterbury *against* Ward. Easter 6 Geo. 2.

In Debt upon a Recognizance of Bail. **A** Rule *Nisi* for Judgment for the Plaintiff upon an Issue of *Nul tiel Record* was discharged, the Record of the Recognizance produced by the Plaintiff being conditional, and the Recognizance set forth in the Declaration without any Condition.

Steward *against* Bishop.

ONE Person became Bail for Defendant before a Judge, and surrendered him to the Fleet Prison. Plaintiff after the Render proceeded to serve the Sheriff with a Rule to bring in the Body. And upon a Motion to stay the Proceedings against the Sheriff, a Question arose, whether one Person only being Bail, the Render was effectual or not; and the Court held the Render insufficient; and refused to stay Proceedings against the Sheriff, but afterwards two Bail were put in and justified in Court; and thereupon Proceedings against the Sheriff were staid on Payment of Costs. Plaintiff insisted that he had been delayed of a Trial, and that the Bail ought to be bound for the Debt, and were too late to Render; but the Court were of a contrary Opinion, Plaintiff having proceeded

ceeded against the Sheriff as above-mentioned, and not upon the Bail-Bond.

Hadderweek *against* Catmur. Mich. 7 Geo. 2.

Defendant was held to Bail by Lord Chief Justice's Order; upon Affidavits of a criminal Conversation with Plaintiff's Wife. Defendant afterwards applied to Lord Chief Justice; upon Affidavits of himself and Plaintiff's Wife, that Plaintiff having been long beyond Seas, and the Wife having had Advice of his Death, received Defendant's Addresses, and married him as her second Husband. Lord Chief Justice ordered Defendant to apply to the Court, and upon reading Affidavits and hearing Counsel on both Sides, the Chief Justice was of Opinion that the Order for Bail ought to be discharged, nothing criminal appearing in the Defendant; and in Cases of this Kind, which differ from Actions brought upon Contracts, no Bail is required, unless by the Special Order of a Judge, which Defendant hath a Right to apply to the Court to discharge, if not well founded. *Fortescue* and *Reeve* thought that entering into the Foundation of the Order was examining the Merits of the Cause; and therefore improper before the Trial. Defendant was held to Bail, and had four Days Time to put in the same (*absente Denton*).

Heath *against* Astley.

THE Original Action was brought against Defendant in *Michaelmas* Term last, and for Want of Bail above, the Bail-Bond was assigned in *February* following; afterwards Defendant died, and the Bail moved to stay Proceedings against them, the Plaintiff not having obtained Judgment upon the Bail-Bond; the Court on hearing Counsel on both Sides, ordered the Proceedings to be staid upon Payment of Costs, being of Opinion that the Matter was never carried farther than the Bail-Bond standing as a Security for what should be recovered upon a Trial; and if that had been the Case, and Defendant had died before the Trial, the Suit would have been at an End; the Plaintiff might have proceeded more speedily; and if any Inconvenience happens to him, it is through his own Laches. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Davenport

Davenport *against* Wall.

THE same Question determined in the same Manner; the *Capias* in the Original Action was returnable on the first Return of *Easter* Term last. Defendant died before *Trinity* Term. *Per Cur'*: Plaintiff might have had Judgment and *Ca. Sa.* of *Easter* Term last, if he had proceeded as he might have done. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wingfield *against* Goodridge.

BAIL was taken in Town before a Judge, and the Bail, who lived in the Country about ten Miles distant from *London*, returned Home, and being afterwards excepted against, sent an Affidavit of their Sufficiency: Whereupon *Eyre* moved to justify in Court. *Wright* objected, that the Bail being taken before a Judge in Town, they cannot justify by Affidavit, but must appear personally in Court. Court held the Objection good; but gave Defendant a Week to perfect his Bail, to give them an Opportunity to come to Town to justify.

Whalley *against* Martin.

Defendant superseded three Years since, and arrested again for the same Debt; moved to be discharged upon entering a common Appearance; but it appearing that one *Williams*, formerly Plaintiff's Attorney, had, after leaving a Declaration in the Office, deserted the Cause, and absconded, whereby Defendant obtained a *Superfedeas* by Surprise without Plaintiff's Knowledge, Defendant was held to Bail.

Martin *against* Price and others. Hil. 7 Geo. 2.

EYRE moved to stay Proceedings against the Bail in an Action of Debt brought upon the Recognizance, the Writ not having been served four Days before the Return. Court made a Rule to shew Cause, which was afterwards made absolute.

Ormond,

Ormond, Assignee of the Sheriff, *against* Griffith.

Defendant put in the same Bail before a Judge in due Time as were Bail to the Sheriff. Plaintiff excepted against the Bail, and for Want of Addition or Justification took an Assignment of the Bail-Bond, and proceeded thereupon. Defendant moved the Court to stay Proceedings upon the Bail-Bond, alledging that Plaintiff by accepting an Assignment thereof had admitted the Bail to be good; but the Court, upon hearing Counsel on both Sides, refused to stay the Proceedings, the Plaintiff by a late Rule of Court made in *Michaelmas* Term 6 *Geo. 2.* being at Liberty to except against the Bail above, although it be the same Bail that was taken by the Sheriff. *Chapple* for Defendant; *Eyre* for Plaintiff.

Garnett *against* Heavifide.

Defendant moved for ten Days Time to put in Bail, and that upon putting in good Bail, Payment of Costs, Pleading the general Issue, and taking Notice of Trial within Term, Proceedings on the Bail-Bond might be stay'd. The Court made a Rule to shew Cause, which was afterwards made absolute upon hearing Counsel on both Sides: The Case was, that the Plaintiff had sued out a *Testat'* Attachment of Privilege from *Middlesex* into *Yorkshire*, and Bail was taken as in a Country Cause, and filed with the Filazer of *Yorkshire* by Mistake; and in order to give Defendant an Opportunity to rectify that Mistake, the Rule was made.

Birch, Executor, *against* Douglass. Hil. 7 *Geo. 2.*

Plaintiff's Testator had executed a Letter of Licence to Defendant for five Years, which were not expired at the Time. Defendant was arrested and held to Bail at Plaintiff's Suit. *Baynes* moved that Defendant might be discharged upon entering a common Appearance; but the Court denied the Motion, being of Opinion that entering into the Question about the Letter of Licence (which could not amount to more than a Release) was entering into the Merits of the Cause.

Low *against* Ravill. Easter 7 Geo. 2.

THE Defendant was surrendered by his Bail to the *King's Bench* Prison instead of the *Fleet* by Mistake ; he was afterwards surrendered rightly, and the Bail moved to stay Proceedings upon the Bail-Bond : A Rule was made to shew Cause, which was afterwards discharged upon hearing Counsel on both Sides, the Plaintiff having been delayed of a Trial. *Eyre* for Defendant ; *Hawkins* for Plaintiff.

Merrett *against* Montfort.

C. *A. Sa.* against the Principal whereupon to found a Proceeding against the Bail left with the Sheriff *February* 6, returnable *February* 9, held to be a Day too soon, and Proceedings against the Bail stayed. *Corbet* for Defendant ; *Comyns* for Plaintiff.

Waddington, Sheriff Co. Hunt, *against* Fitch.

IN an Action upon a Bail-Bond taken on an Attachment out of the Court of Chancery, Defendant craved *Oyer*, and pleaded the Statute 23 *Hen.* 6. That the Bond was taken for Ease and Favour, &c. to which Plaintiff demurred, and Defendant joined In Demurrer. After Argument, Judgment was given for Defendant. *Eyre* for Defendant ; *Chapple* for Plaintiff. *Cooke, lib.* 4. fol. 76. *Dyer, fol.* 119. The Condition of this Bond appeared to be for Defendant's Appearance before the King in his High Court of Chancery, at the Return of the Writ, to answer the King, as also all such other Matters as should be then and there laid to his Charge ; and further to perform and abide such Order as that Court should direct in this Respect : Which is the common Form, where the Attachment issues for want of Appearance or Answer ; so that if Plaintiff, instead of demurring, had replied a Bill filed in Chancery, Process of *Subpœna*, &c. and that the Attachment issued for want of Appearance or Answer, agreeable to the Fact, probably he might have maintained his Action. *Vide* the Case following :

Debt on Bail-Bond for the Appearance of one *Mugg coram Justic'*, &c. *apud Westm'*, &c. *ad respondend' dicto Domino Regi de & super*

super hijs quæ eidem Mugg adtunc & ibidem objiciuntur, & ulterius ad faciend' & recipiend' quod Cur' dicti Domini Regis de eo Cons' in hac parte.

On pleading the Statute 23 H. 6. *quod fuit Capt' pro Eassamento, &c.* And on a general Demurrer after Argument *Trin. 2 Geo. 1.* and *Hil. 3 Geo. 1.* in *Mich. 4 Geo. 1.* the Court gave Judgment that the Bond was void.

And differed this Case from an Attachment in Process out of Chancery, (which was strongly urged by the Plaintiff's Counsel) for that is no more than a Process to compel the Party to appear and answer, &c.

And this Judgment was given *Mich. 4 Geo. 2. C. B. Field, Vic' v. Watford*, one of the Obligors with *Mugg*, the Principal in the Obligation.

Cook and others *against* Sankey. *Trin. 7 & 8 Geo. 2.*

DARNALL moved, that a common Appearance might be accepted for Defendant, and produced a Copy of the Plaintiff's Affidavit made to hold the Defendant to Bail; whereby the Action appeared to be for entering Plaintiff's Ground, and taking away and spoiling his Hop-Poles, and treading down his Hop-Plants to the Damage of 20*l.* *Darnall* insisted, that Plaintiff cannot be his own Judge of the Damages either in Trespass or in a Special Action upon the Case; and Defendant ought not to be held to Bail without a Judge's Order. *Per Cur'*: The Plaintiff is the proper Person to swear to his Damages, by the Act of Parliament. No Rule.

Aucher *against* Hamilton.

THE Judges in the Treasury refused to order a Bail-piece to be filed, twenty Days being lapsed since the Caption, the Words of the general Rule being, that such Bail-pieces shall not be filed without Leave of the Court. Court was afterwards moved upon Mr. *Newsome's* (Defendant's Agent) Affidavit, that he received the Bail-piece in due Time, but that it was omitted to be filed by his Clerk's Neglect. Court ordered the Bail-piece to be received and filed.

Mason *against* Bruce.

Defendant surrendered in Discharge of his Bail the last Day of last Term, (being the *quarto die post* of the Return of an Action of Debt upon the Recognizance) at Mr. Justice *Denton's* Chambers, after the rising of the Court. The Filazer made a general Entry of the Surrender upon Record as done in Court. The Plaintiff moved, that the Roll might be taken off the File; and a Rule to shew Cause was made, which was afterwards made absolute, upon hearing Counsel on both Sides; the Surrender not being *sedente Curia* was too late. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Newman *against* Butterworth. Hil. 8 Geo. 2.

Defendant moved to stay Proceedings against his Bail, pending a Writ of Error. Plaintiff insisted, that the Bail ought to give Judgment, and that Execution only should stay. But *per Cur'*, the Bail ought not to be precluded from surrendering the Principal; and therefore let all Proceedings be staid pending the Writ of Error. *Comyns* for Defendant; *Skyner* for Plaintiff.

Against Ewer.

H*awkins* moved to stay Proceedings in an Action upon the Recognizance against the Bail, the principal Defendant having been surrendered to the *Fleet*, and afterwards charged in Execution there by Plaintiff. *Wright* for Plaintiff objected, that Defendant had pleaded; and Plaintiff demurred; that therefore Defendant's proper Method was to procure an Amendment of his Plea; but the Court held, that Plaintiff could not proceed against the Bail after charging the Principal in Execution. Defendant should not have pleaded, but moved the Court sooner. Let Proceedings be staid upon Payment of Costs *ex assensu*.

Cremet *against* Bulman.

BAIL was put in, and an Exception taken thereto. Defendant within the Time for perfecting the Bail gave Notice to add and justify in Court, but instead thereof did so at a Judge's Chamber, and was surrendered to the *Fleet*, which was held insufficient, the Bail not being perfected, and the Rule to shew Cause why Proceedings on the Bail-Bond should not be staid was discharged upon hearing Counsel on both Sides. *Skinner* for Plaintiff; *Wright* for Defendant.

Fleetwood *against* Poictier. Easter 8 Geo. 2.

THIS was an Action of Covenant brought by Plaintiff, Patentee of *Drury-Lane* Play-house, against Defendant for not performing Dances upon the Stage according to Articles, whereby Plaintiff swore himself dampnified 100*l*. Defendant moved in the Treasury for a common Appearance, but did not obtain a Rule, the Plaintiff having sworn to a certain Damage.

Harriman *against* Clegg.

Affidavit of Justification by Bail, that they were severally worth the Sum wherein they were bound by their Recognizances, after all their *Just* Debts paid and satisfied, held to be insufficient, not being in common Form; the Word *Just* ought to be omitted.

Blick *against* Halpenn and his Wife.

THE Husband absconded, and could not be taken; but the Wife was arrested by mesne Process; and moved in the Treasury that a common Appearance might be accepted for her, which was ordered on hearing the Attornies on both Sides: The Reason is, that if the Wife was to be held to Bail, it would be in the Power of the Husband to set up a sham Action against her, and keep her in continual Imprisonment; otherwise, if the Hus-

band and Wife had been both taken, in that Case both shall be held till Bail be given for both: The Reason is, that otherwise a Woman might marry a Prisoner, and thereby being free from Imprisonment herself, defraud her Creditors. *Roll's Abr.* 583. *Smith and Storey.* 1 *Syd.* 393. *Cro. Car.* 118. *Trin.* 9 *W.* 3. *Clarkson* against *Watkinson* and Wife, in *B. R.*

Clarke against Baker.

PROCEEDINGS were stayed in an Action of Debt brought upon a Recognizance of Bail, pending a Writ of Error, without Defendant's giving Judgment; because thereby Defendant would be precluded from a Surrender, which is not reasonable. *Chapple* for Plaintiff; *Comyns* for Defendant.

Knight against Winter, Bail for Smothergil.

THE Principal was rendered in Discharge of his Bail in due Time; and Notice thereof was given to Plaintiff's Attorney. The *Reddedit se* was marked in the Judge's Book, and signed by the Judge; but was not marked or signed upon the Bail-piece itself, which was upon an *Habeas Corpus*, and had been delivered out by the Judge's Clerk to Plaintiff's Attorney, to be filed, who did not file it, but proceeded to Judgment against the Bail for want of a *Reddedit se* being marked upon the Bail-piece. *Wright* and *Hawkins* moved for Defendant to set aside the Judgment against the Bail, and that the Bail-piece might be filed, and the *Reddedit se* entered thereupon, agreeable to the Fact; and upon hearing *Eyre* and *Umlin* for Plaintiff, the Court was of Opinion that the Practice of Plaintiff's Attorney in taking away the Bail-piece from the Judge's Chamber was unwarrantable, and set aside the Judgment, with Costs (Defendant having done every Thing in his Power to make the Render effectual) Defendant consenting to bring no Action, and ordered the Bail-piece to be filed, and the *Reddedit se* entered.

Young *against* Wood.

SKINNER moved to strike out of the Bail-piece one of the Bail, another (who was ready to justify) being added in his stead. *Belfield* objected that no Affidavit was produced that the Person prayed to be struck out, was a material Witness in the Cause, which Affidavit the Court thought necessary, and rejected the Motion; whereupon *Skinner* prayed that the Bail added might be struck out, which was granted.

Cantrel, Administrator, *against* Graham.

THIS was an Action brought upon a Lease dated in 1727, for two Years Rent due since the Year 1733, when Defendant became a Bankrupt. Defendant moved for a common Appearance, and produced his Certificate, allowed, confirmed and enrolled. Upon hearing Counsel on both Sides, neither the Possession nor the legal Interest of the Estate being in the Defendant, a common Appearance was ordered to be accepted. *Skinner* for Defendant; *Hewkins* for Plaintiff,

Lord Molineux *against* Charles.

THE Question was, Whether Defendant could be held to Bail for 10*l.* in a County Palatine, the Statute 11 & 12 of *W.* 3. *cap.* 9. requiring 20*l.* to be due; and the Act to prevent vexatious Arrests extending every where but into *Scotland*, and requiring Bail for 10*l.* Court took Time to consider of it. (It hath been held in the *Exchequer*, that to hold to Bail in a County Palatine 20*l.* must be sworn due, as alledged at the Bar.)

Ling *against* Woodyer. Hil. 9 Geo. 2.

THE Court ordered the Hour of the Day, or true Time of the Defendant's Surrender, to be entered by the Filazer, in order that it might appear whether the Surrender was made before or after the Rising of the Court. *Mason against Bruce*, *Trin.* 7 & 8 Geo. 2. *Hawkins* for Plaintiff; *Corbet* for Defendant.

Huckle *against* Ambrose. Trin. 10 Geo. 2.

DEFENDANT was brought by *Clendon*, one of his Bail, to Mr. Justice *Denton*'s Chamber and surrendered, and the *Reddidit se* signed by the Judge; whereupon *Clendon* fraudulently departed and refused to pay the Fees. *Price*, the Tipstaff, looking upon this to be a Trick, and that the Surrender was not compleat without Payment of the Fees, refused to take Charge of the Defendant, who went away at large: *Price*, upon Affidavit of this Matter, applied to the Court to vacate the Surrender, and *Clendon* was ordered to shew Cause; and upon shewing Cause, the Fact appearing to be as stated by *Price*'s Affidavit, the Court was of Opinion that the Entry of the *Reddidit se* upon the Bail-piece is only an Escrol, and a Warrant to the Filazer to enter the Surrender upon Record; as it was *Clendon*'s Duty to pay the Fees, and he refused, the Surrender is no Surrender, but ineffectual, and ought not to be recorded; and the Entry upon the Bail-piece being obtained by Fraud and Imposition, was ordered to be struck out. *Vide Farisley* 77. 2 *Keble* 2. *Chapple* for *Price*; *Wright* for *Clendon*.

Willoughby, Administrator of Lady Jenkins, *against* Rhodes.

On a Bail-Bond. **T**H E Proceedings were ordered to be stayed on Payment of Costs; it appearing that Lady *Jenkins*, the Plaintiff in the original Action, died before Judgment could be recovered therein. *Chapple* for Defendant; *Eyre* for Plaintiff.

Bett *against* Goodman and another.

UPON an Affidavit that Defendants were indebted to Plaintiff generally 13*l.* *Capias ad respondendum* was indorsed in like Manner to hold them to Bail; the *Ac etiam* was against them severally, and they were arrested and severally held to Bail: And Plaintiff having proceeded against the Sheriff by Rule to bring in the Bodies, *Wright* moved for Defendants for a common Appearance,

Appearance, and to stay Proceedings against the Sheriff, insisting that as the Affidavit was of a joint Demand, and the Indorsement agreeable thereto, there was no Affidavit to warrant Bail in separate Actions. *Eyre* urged *pro Quer'*, That the Act of Parliament requiring an Affidavit of the Cause of Action doth not require it to be very particular; an Affidavit that Defendants are generally indebted, is sufficient to hold them to Bail jointly or severally, as Plaintiff chooses to proceed; but the Court being of Opinion that the Affidavit was not sufficient to hold Defendants to Bail severally, *Eyre* closed with a Proposal made by *Wright*, to accept 13*l*. for the Debt and Costs in the joint Action.

Weyman against Weyman. Mich. 10 Geo. 2.

AN Action of Debt was brought upon a Judgment after a Writ of Error, and Bail put in thereupon; but no Bail was given in the original Action: And the Question was, Whether Bail being put in upon the Writ of Error, Defendant ought to be held to Bail in the Action on the Judgment: It was urged for Defendant, that according to the Course of the Court, where Bail is given in the original Action, no Bail is required in the Action on the Judgment; and the Bail in Error who are bound for Debt and Costs, and cannot surrender the Principal, are a better Security than Bail in the original Action. *Per Cur'*: No Instance can be shewn where Bail put in on a Writ of Error has been held sufficient to excuse Bail in an Action of Debt on Judgment. Defendant was held to Bail. *Eyre* for Defendant; *Chapple* for Plaintiff. It was said by *Chapple*, who quoted *Cooper* and *Price*, *Syd.* 294. *Hickman* and *Corbet*, 2 *Keb.* 53, & 70. that in Case the Writ of Error should be *non-pros'd* for want of transcribing the Record, the Bail would not be liable; but the Law is otherwise; and the Bail being bound to prosecute the Writ of Error with Effect, are liable in Case of *Non-pros.*

Shaw, Bart. *against* Hawkins.

THIS was an Action of Debt on Bond, wherein Defendant was held to Bail on Plaintiff's Affidavit. Defendant moved for a Common Appearance, and that Plaintiff might produce the Bond to the Court, upon an Affidavit that Defendant had great Reason to believe that the whole Sum due was paid by one of his Co-obligors, which would appear by Indorsements made on the said Bond when produced. Plaintiff in Answer, made Affidavit, that 100*l.* and upwards remained due to him on the Bond, after all just Allowances ; that he had seen the Bond, which was uncanceled and in full Force some few Months before, but had mislaid it ; and being severely afflicted with the Gout could not search among his Papers himself, so that it could not be produced. It was urged for Plaintiff, that no Declaration being yet delivered, Defendant is not intitled to *Oyer* of the Bond ; but after a Declaration, with a *Profert in Cur'*, he may demand *Oyer*. The Court held, That as the Matter of Bail is discretionary, and as the Measure of the Sum for which Bail ought to be given, is with Certainty to be had only from the Bond itself, the Bond ought to be produced, and for want of producing it a Common Appearance was ordered. *Wynne* for Defendant ; *Chapple* for Plaintiff,

Spinks *against* Bird.

Plaintiff declared in an Action of Debt upon Bond : Defendant craved *Oyer*, and the Condition appeared to be for Performance of Covenants. Defendant, after *Oyer*, instead of Pleading, enters *Nil dicit*, in order that *Oyer* of the Condition appearing upon Record, he might bring a Writ of Error without Bail. The Court, upon hearing Counsel on both Sides, set aside this Entry, and gave Plaintiff Leave to enter Judgment by Default : And the Question now was, Whether the Condition of the Bond not appearing on Record, Bail ought to be required on the Writ of Error or not ? And the Court held, that the Matter of Bail is properly examinable by Affidavit ; and the Bond being conditioned for Performance of Covenants, Bail ought not to be required on the Writ of Error. *Parker* for Defendant ; *Chapple* for Plaintiff.

Debalfe

Debalfe *against* Mackensie. Hil. 10 Geo. 2.

PLaintiff had made Affidavit that Defendant was indebted to him a large Sum of Money ordered to be paid by a Sentence of the Bailiff of *Meudon* in *France*, as a Compensation for not making good a Charge against Plaintiff for Bigamy. Defendant had appealed to the Parliament of *Paris*; and it appeared by the Acts of that Court, that the Sentence of the Bailiff of *Meudon* was annulled (not upon the Merits, but according to the Custom of the Superior Court, who, on an Appeal from an inferior Jurisdiction, constantly annul the former Sentence, and proceed as in an original Suit); and the Question was, Whether Defendant ought to be held to Bail or not? Lord Chief Justice, *Denton*, and *Comyns*, were of Opinion, that as the Sentence of the Bailiff of *Meudon* appeared to be annulled, and not in Force, it was not necessary for the Court to consider whether this Sentence, when in Being, would have been a sufficient Cause of Action to hold Defendant to Bail; but looked on the Sentence as discharged and made void; and therefore ordered a common Appearance to be accepted. Mr. Justice *Fortescue* was of Opinion Defendant ought to be held to Bail. *Eyre* and *Wynne* for Defendant; *Chapple* for Plaintiff.

Harris *against* Roberts. Easter 10 Geo. 2.

IN an Action of Debt on Bond, attested by one Witness only, Plaintiff had been nonsuited on *Non est factum* pleaded, the Witness not making sufficient Proof of the Execution of the Bond. Plaintiff brought a new Action on the same Bond: Defendant moved for a Common Appearance, and obtained a Rule to shew Cause, which was discharged on hearing Counsel on both Sides. *Note*; Defendant did not in his Affidavit deny the Execution of the Bond. *Eyre* and *Wynne* for Defendant; *Chapple* for Plaintiff quoted *Chambers* against *Robinson*. *Mich. 1 Geo. 2. in C. B.*

Gregory *against* Gurdon.

AFTER an Exception against the Bail put in before a Judge, Defendant added Bail ; but did not justify in Court pursuant to the Rule for perfecting Bail in four Days. Plaintiff proceeded on the Bail-Bond without excepting against the additional Bail ; and the Proceeding was held regular. *Hayward* for Defendant ; *Chapple* for Plaintiff.

Parrot, Administrator, *against* Smith.

Plaintiff makes Affidavit that Defendant is indebted to him, as Administrator, 40*l.* by Promissory Note given by Defendant to Plaintiff's Intestate, as Plaintiff believes, and as appears by Note in Plaintiff's Custody, to which he refers. The Parties had attended Mr. Justice *Fortescue*, who was of Opinion that this Affidavit did not contain sufficient Certainty of the Cause of Action, and ordered a Common Appearance. *Parker* moved to discharge the Order ; urging that the Affidavit was sufficient to shew a probable Cause of Action, (which is all that in this Case is requisite) and is as strong as an Administrator can possibly make. *Per Cur'* ; Let the Judge be re-attended.

Birch, Attorney, *against* Graves.

Defendant being arrested at Plaintiff's Suit in an Action for Fees, &c. entered into a Bail-Bond with Sureties, which for want of Bail above was assigned, and Actions brought thereon ; wherein Plaintiff declared. Defendant pleaded *Non est factum*, and after Verdicts for Plaintiff at last Assizes, *Chapple* moved for Leave to file Bail in the original Action, on Payment of Costs, and consenting that Plaintiff might take Judgment on the Bail-Bond to stand as a Security for what he should recover ; and produced an Affidavit from Defendant that he never, in his own separate Capacity, employed Plaintiff as his Attorney ; and that he had a good Defence in this Action. A Rule was made to shew Cause, which was afterwards made absolute. *Chapple* for Defendant ; *Eyre* and *Wrights* for Plaintiff.

Goodtitle

Goodtitle *against* Bennington. Trin. 10 & 11 Geo. 2.

In Ejec- ment. A Writ of Error being brought, and the Bail thereon offering to justify in Court, it was objected by *Agar* for Defendant in Error, that the Recognizance was irregular; for that the Party, Plaintiff in Error, ought himself to be bound, as required by Stat. 16 & 17 Car. 2. *Eyre* answered, That by that Statute the Recognizance of the Party himself alone is sufficient; and since he hath not taken Advantage thereof, but hath found Sureties, Defendant in Error has a larger, and probably better Security than by Law he is intitled to. The Practice was reported to be various; sometimes the Party himself was singly bound, and at other Times Sureties engaged for him. The Bail justifying in Court were allowed. Plaintiff may sue out Execution at his Peril.

Sampson *against* Warren. Mich. 11 Geo. 2.

Plaintiff, having made Affidavit of his Debt *in Banco Regis*, caused Defendant to be arrested by *Latitat* indorsed for Bail. Defendant removed himself to the Fleet by *Habeas Corpus* charged with this *Latitat*, and Plaintiff declared against him there without making a second Affidavit. Defendant moved to be discharged on entering a common Appearance, insisting that, in order to hold him to Bail regularly, Plaintiff ought to have made Affidavit of his Debt in this Court, and procured it to be indorsed on the Declaration according to the Rule Mich. 8 Geo. 2. A Rule was made to shew Cause, which was discharged, the Court being of Opinion, that the Rule of Court extends only to Cases where a Declaration is the first Proceeding, and not to this Case. *Burnett* and *Draper* for Defendant; *Eyre* for Plaintiff.

Hansley *against* Page. Hil. 11 Geo. 2.

KEntleby moved to set aside *Fi. Fa.* against the Bail, Defendant having surrendered himself in their Discharge. It appeared by the Affidavit, that the second *Sci. Fa.* was returnable *Cro. Mart.* Nov. 12. and that Defendant surrendered himself November 15, the Appearance-Day of the Return, *Per Cur'*: The Affidavit

is defective; it doth not appear that the Defendant surrendered (*sedente Curia*) on the Appearance-Day of the Return of the second *Sci. Fa.* which if he did not, the Surrender is out of Time, No Rule.

Wafs against Cornett and Malpas.

THIS was an Action brought against Defendants on a Recognizance as Bail, Defendants moved to stay the Proceedings for want of fifteen Days between the Tesse and Return of the *Capias ad respondendum*, and not aided by Statute, a Rule was made to shew Cause, why Proceedings should not be staid. On shewing Cause, Plaintiff insisted, that this being a Matter of Error, and not of Irregularity, the Motion was improper. *Per Cur*: The Rule should have been to shew Cause why the Writ should not be quashed. Defendant cannot have *Oyer* of the *Capias*, and therefore cannot take any Advantage by Pleading. Plaintiff chose to begin *de novo*, and a Rule by Consent was made to quash the Writ. *Draper* for Defendant; *Wright* for Plaintiff,

Ruffel against Gately, Easter 11 Geo. 2.

MR. Justice *Comyns* had ordered Bail for 200*l.* in an Action for a malicious Prosecution for Forgery upon Plaintiff's Affidavit. Defendant moved for a common Appearance; and it appearing that Plaintiff was not acquitted of the Indictment upon the Merits, but upon a Flaw, and no Precedent being produced of an Order for Bail in such an Action as this (though for false Imprisonment there was) the Rule to shew Cause why a common Appearance was made absolute. *Eyre, Parker* and *Hayward* for Defendant; *Wright* and *Wynne* for Plaintiff.

Jan 256. 1152 Calvera and his Wife against De Miranda.
2 B 490 Kew. 1734

1734. 330 **I**N an Action of Trespafs and Assault to the Damage of 500*l.*
Q 90. 181 B Mr. Justice *Fortescue* had ordered Bail for 140*l.* and the Defendant being present at the Time the Recognizance of Bail was taken, his Bail were bound jointly and severally in 140*l.* Plaintiff recovered
4 B 76 233

covered a Verdict for 300 *l.* and the Bail moved to stay Proceedings against them both on their Payment of 140 *l.* and upon shewing Cause the Court were of Opinion, that as the Damages in the Writ were laid 500 *l.* here is no Fraud upon the Bail, the Recognizance is separate as well as joint, and in its Nature a Judgment, the Award of the Court thereupon is, that Plaintiff have Execution; therefore so far as the Penalty of each Recognizance will go, it is just and equitable the same be applied towards Satisfaction of the Condemnation-Money, for Payment whereof, and not of any particular Sum, the Condition is. The Practice of the King's Bench had been mentioned, but the Proceeding there by Bill, where Bail is taken without any particular penal Sum, differs widely from the Form of Proceedings here, and must be governed by the *Ac etiam Bille*, otherwise Bail might be defrauded. *Bootle and Burnett* for Bail; *Eyre and Hayward* for Plaintiff.

Lane against Jones. First Friday in Term.

WILLIS an Attorney, being committed last Term by the Court for a Contempt, applied this Term to be discharged upon Bail. *Eyre* for *Willis*; *Skinner* and *Wright* for *Jones* the Prosecutor. This Commitment was for a Crime of most heinous Nature, scandalous to the whole Profession. *Willis* hath done nothing towards clearing himself since his Commitment, tho' Prosecutor exhibited Interrogatories against him the first Day of this Term. *Cur'*: This was a grievous Crime, his Confinement will be Part of his Punishment: It is too early to apply yet, he may apply again the latter End of the Term. No Rule. He did apply the latter End of the Term, and was admitted to Bail.

Paradice, Assignee, against Holiday. Mich. 12 Geo. 2.

MOTION to set aside Proceedings on Bail-Bond assigned and put in Suit *Oct.* 31. last returnable *tres Mich.* and being a Country Cause, Defendant had eight Days after the Appearance-Day exclusive to put in Bail, and the Bail-Bond could not regularly be put in Suit till *November 1.* *Gapper* for Plaintiff insisted that the Bail-Bond might be assigned at any Time, though it could not be
put

put in Suit, which are the Words of the Act of Parliament, and General Rule of Court. *Per Cur'*: There is no Occasion to decide this Matter at present here, the Bail-Bond is put in Suit too early; the *Capias* on the Bail-Bond assigned appears to be sued out *October* 31. The Proceedings were set aside. *Agar* for Defendant.

Lushington *and* Doe on the Demise of Godfrey.

In Ejectment **B**AIL was put in by Plaintiff in Error, but he himself was not bound as required by the Statute of 16 & 17 Car. 2. *Draper* moved for Leave to take out Execution, and obtained a Rule to shew Cause. *Wright* for Plaintiff in Error urged, that it is become constant Practice to give Bail by Sureties, and more for the Advantage of Defendant in Error. *Per Cur'*: Before the Statute 16 & 17 Car. 2. no Bail was required in Dower, Ejectment, &c. *Per Stat.* 3 Jac. 1. Bail was required in Debt only. *Stat. of Car.* extends to all Personal Actions after Verdict, and requires Sureties; in Dower, real or mixed Actions (Ejectment is a mixed Action) after Verdict requires Party to be bound, and that sufficient. This is a less Security, than by Bail who justify, the Party is bound by the Judgment. Bail in Error cannot be put in before a Commissioner in the Country. Method of the Statute cannot be followed without Inconvenience; a better Method where the Party lives at a great Distance from *London* is substituted, and has been the Practice ever since the Statute. The Rule discharged.

Woods *against* Armstrong.

SKINNER moved for Bail upon a Writ of Error in an Action of Debt upon Bond, conditioned for Payment of 300*l.* mentioned in a Surrender of a Copyhold by Way of Mortgage, and not for Performance of Covenants, wherein Judgment had passed by Default. *Per Cur'*: There must be Bail. This Case is out of the Statute 16 & 17 Car. 2. but within the Statute 3 Jac. 1.

Nichols *against* Dallyhunty.

AFFIDAVIT to hold to Bail, made by Plaintiff's Wife, who being convicted of Pocket-picking was transported; and afterwards being convicted of returning from Transportation, received Judgment of Death. These Matters appearing from Record, she was looked upon as an infamous Person, and no Credit given to her Affidavit. Plaintiff offered to produce supplemental Affidavits to prove that Defendant had confessed the Debt, and that he intended to fly into *Ireland*: But *Per Cur'*, this Woman cannot be a Witness in any Case; and as there is not a sufficient Affidavit to found the Process, that Defect cannot be now supplied. Rule absolute for Common Appearance. *Eyre* for Plaintiff; *Hayward* for Defendant.

Simpson *against* Ashburne.

RULE to shew Cause why Proceedings on Bail-Bond should not be set aside. Bail above was put in, and being accepted against last Vacation, the Bail justified at a Judge's Chamber in due Time; but Plaintiff being dissatisfied therewith, Notice was given to justify in Court on the first Day of this Term; the Bail was not justified 'till *October* 28, and in the Interim the Bail-Bond was put in Suit. The Court made a Question, Whether in such Case Defendant has the first Day of the Term only, or the first four Days of the Term to justify in Court; but the Practice appearing to be unsettled in that Particular, the Point was not determined; and the Justification here not being within the first four Days, the Bail-Bond was held to be regularly put in Suit, but Proceedings thereon stayed on Payment of Costs.

Le Writ *against* Tolcher.

Plaintiff made Affidavit that Defendant had seized and detained his Ship to his Damage; and a *Capias ad respondendum* was thereupon indorsed for Bail, without a Judge's Order. Rule for common Appearance and *Superfedeas* was made absolute; the Damages

images in this Case are uncertain, and Plaintiff was not entitled to Bail without a Judge's Order. In *Debt*, *Assumpsit*, *Trover*, *Covenant* by *Ac etiam*, Bail is of course. In *Trespass*, *Detinue*, and special Action on the Case, or of Covenant, at Discretion: For Words no Bail, unless Slander of Title. *Eyre* and *Wright* for Defendant; *Wynne* for Plaintiff.

Champion *against* Townshend.

MOVED by *Wright* to discharge Proceedings against Sheriff upon Circumstances, *viz.* the Bail to the Sheriff good, when Defendant arrested the 4th of *August* last; and the Sheriff was obliged to take Bail under the Statute of *Hen. 6.* but the Bail since were become insufficient. Denied, but enlarged the six Days Rule to bring in the Body three Days further.

Henley *against* Anderson.

RULE for *Vic' Midd'* to bring in the Body within six Days, which the Sheriff did not. Plaintiff moved for Attachment, and the Court made Rule to shew Cause. The Sheriff shewed for Cause, that Bail was put in and justified, and produced the Rule of their having justified: But it appearing that they had not justified before the Plaintiff's Application to the Court for Attachment, the Court ordered, That on Payment of Costs the Rule should be discharged. *Eyre* for the Sheriff; *Umlin* for Plaintiff.

Whittingham *against* Coghlan. Hil. 12 Geo. 2.

THIS was an Action brought for 50*l.* Penalty, given by Act of Parliament for Defendant's practising as an Attorney, not being duly admitted; wherein Defendant was held to Bail. Rule to shew Cause why common Appearance, and *Superfedeas* absolute. This is for a Fine or Amerciament, and is in the Nature of a *Quia tam.* *Eyre* for Plaintiff; *Hayward* for Defendant.

Lloyd *against* Painter.

RULE to shew Cause why Proceedings on Bail-Bond should not be stayed, made absolute on Payment of Costs, accepting Declaration in the original Action, pleading the General Issue, and taking Notice of Trial within Term, and the Bail-Bond to stand for Security, Plaintiff having been delayed of Trial. It was objected for Defendant, that Plaintiff had delayed himself; he might have declared *de bene esse*; but *per Cur'*, There is no Necessity for so doing.

Huggins *against* Bambridge.

A *Capias ad respondendum* indorsed for Bail being issued: Defendant, before the Return of the Writ, and before he was arrested, put in Bail before a Judge, and gave Notice thereof to Plaintiff's Attorney. Plaintiff regarded not the Notice, but caused Defendant to be arrested; and he being in Custody moved for a *Superfedeas*, and had a Rule to shew Cause: It appearing that Plaintiff had not excepted against the Bail within twenty Days after Notice thereof, the Court was of Opinion that the Bail ought to stand, and the Rule was made absolute. *Eyre* for Plaintiff; *Skinner* for Defendant.

Lisle *against* Jenyns.

Defendant, having borrowed 500*l.* of Plaintiff, gave her a Mortgage for Security, which Mortgage was accidentally burnt. Defendant had paid 100*l.* in Part; and in April 1738, was prevailed upon to give Plaintiff a new Bond for the remaining Principal and Interest; whereon an Indorsement was made, signed by Plaintiff, acknowledging the new Bond to be for the old Debt. Defendant, after having obtained his Discharge from the Sessions as a Fugitive for Debt, was arrested on this new Bond, and applied for a common Appearance, and had a Rule to shew Cause, which was made absolute. The Jurisdiction at the Sessions is final, no Appeals from it. *Per Cur'*: This Debt appears to be contracted, in-

curred and occasioned before the Day for that Purpose mentioned in the Statute, which Statute extends to 500*l.* Debt, besides Interest and Costs. *Skinner* for Plaintiff; *Eyre* and *Wright* for Defendant.

Derisley, Attorney, *against* Deland. East. 12 Geo. 2.

W*RIGHT* for Defendant moved to stay Proceedings against the Bail in Actions of Debt brought on the Recognizance, pending the Writ of Error, and obtained a Rule to shew Cause: *Eyre* for Plaintiff urged, That the Bail ought to give Judgment, and Execution only should be stayed. But the Court held otherwise in the Case of *Bail*, who, by giving Judgment would be precluded for surrendering the Principal. He then urged, that a *Ca. Sa.* against the Principal had been returned, and the Bail were too late to surrender: But this is not so, the Bail may surrender the Principal before or on the Appearance-day of the Return of the Action on the Recognizance, where Plaintiff proceeds that Way. If the Proceeding against them be by *Sci. Fa.* before or on the Appearance-day of the Return of the first *Sci. Fa.* sitting the Court, in Case of a *Scire Feci* returned, or the Appearance-day of the Return of the second *Sci. Fa.* sitting the Court, in Case of two *Nichils* returned, Rule absolute.

Darch against Parry.

Debt on Bond. **A**FFIDAVIT to hold to Bail, made by Plaintiff's Attorney, that there is a Bond, that Money appears due; and Defendant a Year and Half ago owned the Debt, and offered to compound. Motion *per Skinner* for Defendant for common Appearance. Shew Cause. The first Part of the Affidavit was held defective, but the latter proving the Acknowledgment of the Debt, sufficient to hold to Bail. Rule discharged. *Eyre* for Plaintiff.

Teale against Cheshire.

DEclared by the Court, that after this Term the Defendant shall give Notice of justifying Bail two Days before Day of Justification; and that they will not indulge the Defendant with any
2 further

further Time, it being an Artifice to defeat the Rule for obliging Defendant to perfect Bail in four Days after Exception taken, and is plainly getting two Days.

Derisley *against* Deland.

CA. Sa. issued against the Principal, and was lodged with the Sheriff for a *Non est invent'* in order to proceed against the Bail. After Ca. Sa. lodged, Defendant brought a Writ of Error; and after the Writ was spent, Plaintiff got a Return of the Ca. Sa. and proceeded against the Bail, which Proceeding was discharged; the Court holding that the Ca. Sa. being returnable at a Time when the Writ of Error was depending, was not a regular Foundation for a Proceeding against the Bail. *Eyre* for Defendant; *Wright* for Plaintiff.

Huggins *against* Bambridge. Easter 13 Geo. 2.

Defendant hearing that a *Capias ad respondendum* was sued out against him, put in Bail at a Judge's Chamber before any Arrest, and before the Return of the Writ, and gave Notice thereof to Plaintiff's Attorney. Plaintiff not being satisfied with the Bail, caused Defendant to be arrested, who applied to the Court, and obtained a Rule to shew Cause why an Attachment should not be issued against Plaintiff, and against *Duell* the Sheriff's Officer, who arrested Defendant, and *Gurney* his Follower. Upon shewing Cause, the Prothonotaries and Secondaries all reported, and the Court was of Opinion, that Bail before a Judge cannot regularly be put in before an Arrest without Plaintiff's Consent. If Plaintiff dislikes such Bail, he may cause Defendant to be arrested; he has no other Remedy, the Sheriff being unconcerned, and no Bail-Bond taken. If such voluntary Bail were sufficient to prevent an Arrest, Defendant might put in *sham* Bail, and thereby elude the Writ, and the Process must be lost. Bail may be put in before the Return of a Writ after an Arrest, but never before an Arrest without Consent. The Rule was discharged. *Skinner, Wynne* and *Agar* for Defendant; *Burnett* and *Boyle* for Plaintiff.

Ward, an Attorney, *against* Alderton.

BAIL being justified in Court, *Prime* for Defendant moved after the last Sitting within Term to stay Proceedings on Bail-Bond upon Payment of Costs. *Agar* for Plaintiff insisted, that the Action being laid in *Middlesex*, and the Writ returnable the first Return, Plaintiff had been delayed of Trial, and the Bail-Bond ought to stand as a Security; but it appearing that no Declaration in the original Action had been delivered *de bene esse*, or otherwise, Plaintiff has delayed himself, and the Rule must be made absolute.

Calveraq and his Wife *against* Pinhero, in Debt on Recognizance as Bail for Miranda, in a Joint Action for an Assault against Miranda and two others. The Pleadings were as follows, viz. Mich. 13 Geo. 2.

Plaintiffs set out the Recognizance as in a separate Action against *Miranda*, with Condition, that if Judgment should be given for them against *Miranda*, he should pay the Condemnation-Money, or surrender, &c. and for Breach assigned, that although Plaintiffs recovered Judgment against said *Miranda* and the other two Defendants; yet Defendant *Miranda* did not pay the Condemnation-Money, or surrender, &c. Defendant pleads *Nul tiel Record* of the Judgment against *Miranda*, taking no Notice of the other Defendants. Plaintiffs reply, that there is a Record of the Judgment against *Miranda* and the other Defendants, as set forth by the Declaration, and deliver the Issue, giving themselves a Day to produce the Record. Defendants Attorney's Clerk received this Issue in his Master's Absence; the Master next Day returned it, and delivered a Demurrer to the Replication. *Wright* and *Draper pro Quer'* urged that this Demurrer is irregular after Issue joined upon *Nul tiel Record*. The Plaintiffs, though they did not bring the Record into Court at the Day given in the Issue-Book last Term, are intitled to have a new Day assigned by the Court; and a Rule was made to shew Cause why the Demurrer should not be set aside; why Defendants Attorney should not receive the Issue by him returned; and why Plaintiffs should not be at Liberty to verify the
Record,

Record, and a Day be appointed for that Purpose. *Eyre* came to shew Cause for Defendants, and argued that no Issue is joined; that one Record is averred by Plaintiffs, and another denied by Defendants. *Per Cur'*: The Question is not whether Issue be rightly or legally joined, the Plaintiffs cannot take upon them to judge of that Matter: Here is an Issue joined; and a Demurrer cannot be received after Issue joined; if no proper Issue be joined, Defendant may take Advantage thereof in Arrest of Judgment. The Plaintiffs may continue the Day for bringing in the Record by them averred. Rule absolute.

Hugh Hunt *against* Hudson and others.

MOTION in the *Treasury* for Bail in an Action for mesne Profits, after a Recovery in Ejectment, upon the Lessor of the Plaintiff's Affidavit that the mesne Profits amounted to 89 *l.* Bail ordered for 80 *l.* This is a Cause of Action which is bailable, or not, at the Discretion of the Court or a Judge. *4 Dec 2802*

Otway *against* Cokayne. Trin. 13 & 14 Geo. 2.

AFTER Plaintiff had been delayed of Trial, Defendant justified Bail, and obtained a Judge's Order to stay Proceedings on the Bail-Bond, upon Payment of Costs, &c. and consenting that the Bail-Bond should stand as Plaintiff's Security. Plaintiff recovered Judgment in the Original Action, and then renewed his Proceedings, and declared on the Bail-Bond. Defendant pleaded *Comperuit ad diem*; which Plea the Court ordered to be set aside, and gave Plaintiff Leave to enter Judgment on the Bail-Bond immediately, but stayed Execution for a Week. It is always intended, and ought in these Cases to be expressed, That Judgment be given, and Execution only stayed. *Boote* for Plaintiff; *Agar* for Defendant.

Kettelby *against* Woodcock. 31st October, In Treasury. Mich. 14 Geo. 2.

A Greement in Writing to deliver a certain Quantity of Goods within a certain Time, at the Price of 300*l.* or in Default thereof, that Defendant would forfeit and pay to Plaintiff 100*l.* Action brought for the Penalty; and upon the Question of, Bail or No Bail? the Judges were of Opinion that Defendant ought to be held to Bail.

Gostelow *against* Wright.

Plaintiff brought an Action upon the Case against Defendant, who appeared, and Plaintiff recovered Judgment, and then brought Debt on the Judgment, and held Defendant to Bail, and recovered a second Judgment. After a *Ca. sa.* returned against the Principal, and before the Return of the Writ in an Action of Debt upon the Recognizance against the Bail in the second Action, the Court was moved to stay Proceedings on the Recognizance, pending a Writ of Error brought to reverse the first Judgment; and upon the Bail's consenting to give Judgment in the Actions brought against them, the Rule obtained to stay Proceedings was made absolute. *Burnett* for the Bail; *Wynne* for Plaintiff.

Carleton *against* Wilkinfon.

Defendant was outlawed on Special Original, and upon reverting the Outlawry, put in Bail with Condition, as usual, to appear to a new Original, to be filed within two Terms. Plaintiff proceeded to Judgment, and Defendant brought a Writ of Error; a Motion was made on Behalf of the Bail, to discharge their Recognizance, no Original having been filed within two Terms; and a Rule made to shew Cause; which was discharged: The Bail may plead as they shall be advised. *Skinner* for Plaintiff; *Agar* for Defendant.

Manning

Manning *against* Williams.

THIS was an Action brought on a Bottomree-Bond, and the Question was, Bail, or No Bail? Two Affidavits for Bail had been made by Alderman *Willimott*; the first was, That the Alderman believed Defendant was indebted to Plaintiff, &c. which was held insufficient. Where the Affidavit is made by a third Person, it must be positive, unless in the Case of an Executor, &c. where Belief is sufficient. The Alderman, by Leave of the Court, made a second Affidavit, That Defendant was indebted to Plaintiff, &c. if the Ship *Suffex* be not unavoidably lost: The Ship was agreed to be lost, and Affidavits were read on both Sides, controverting the Fact, whether the Loss was unavoidable, or not. *Per Cur'*: The second Affidavit of the Alderman is *prima facie* sufficient; otherwise there could be no Bail on Bottomree-Bonds; but the Affidavits *ex parte defendantis* turn the Balance: The Alderman is supported by two Persons, who swear the Ship might have been saved; but for the Defendant, eleven Persons swear the Loss was unavoidable. Rule absolute for Common Appearance. *Skinner* and *Belfield* for Plaintiff; *Prime* and *Burnett* for Defendant.

Treherne against Greffingham. Mich. 15 Geo. 2.

PLainriff, after having recovered Judgment in Ejectment against the Casual Ejector by Default, brought this Action for mesne Profits, wherein he had obtained a Judge's Order to hold Defendant to Bail; and, by Mistake, made his *Ac etiam* in Trespass upon the Case, instead of Trespass only, as it ought to have been. Defendant moved for a Common Appearance; and it was insisted on Plaintiff's Behalf, that Defendant having put in Bail before a Judge to the *Ac etiam* in Case, was now too late to apply. After some Debate, Plaintiff accepted a Common Appearance. It was observed (*per Cur'*) that these Actions for mesne Profits, (which are grown very fashionable) tend to create double Expence. Why should not Plaintiff be ready at the Trial of the Ejectment to prove his Damages, which may be recovered in that Action, without bringing a second for mesne Profits. The true Rule as to the Time from which mesne Profits are to be recovered, seems to be where Judg-

ment is against the Casual Ejector, from the Time of the Delivery of Declarations to the Tenants in Possession, or from the Time of an actual Demand of Possession proved, where Judgment is against the Tenants in Possession (or the Landlord defending in their Stead) from the Ouster admitted by the Common Consent Rule; but in neither Case from the Demise, which may be laid back at Plaintiff's Pleasure. *Umlin* for Defendant; *Birch* for Plaintiff.

**Elton *against* Manwaring; Thomas *against* The Same,
In Monmouthshire.**

Tuesday 3d November, *Skinner* moved to justify Bail for Defendant, who was in Custody, upon the usual Affidavit; and upon an Affidavit of Notice of the Justification served on Saturday last, *Birch* for Plaintiffs object to the Shortness of the Notice, and that Plaintiffs had not sufficient Time to inquire after the Bail. But *per Cur'*: Two Days Notice of Justification is the general Rule in all Cases, and the Bail must be allowed.

Satchwell *against* Lawes.

Proceedings on Bail-Bonds stayed for Want of Notice of Exception against the Bail put in before a Judge, given in Writing to Defendant's Attorney. An Exception had been entered in the Filazer's Book, and verbal Notice thereof given to Defendant, but this is not sufficient; 'tis necessary not only to enter an Exception in the Bail-Book, but also to give Notice in Writing to Defendant's Attorney. *Willes* for Defendant; *Skinner* for Plaintiff,

Newton *against* Lewis.

BAIL on an *Ac etiam, Capias ad respondendum*, and Surrender of the Defendant by his Bail before the Return of the Writ, were held to be irregular, and set aside. *Non est inventus* may be returned, and then the Bail goes for nothing. If a *Cepi Corpus* be returned, Defendant, at the Return, is supposed to be in Custody of the Court, and then, if bailed, to be delivered to his Bail; and there

there can be no Surrender 'till after that Time. It has been held a Contempt, *in Banco Regis*, for the Bail below to become Bail above, and render the Principal before the Return of the Writ. But although Defendant is to be remedied with respect to his Bail, Plaintiff must not be prejudiced; the Return of the Writ is now passed. Let Defendant be brought into Court by *Habeas Corpus*, and the Bail, being present, shall have Leave to render him *de novo*; which was done accordingly. *Prime* for Plaintiff; *Wynne* for the Bail.

Rayner *against* Brough. Easter 15 Geo. 2.

RULE to shew Cause why a Common Appearance should not be accepted for Defendant, who had been arrested in the County Palatine of *Durham*; the Sum sworn due being under 20*l.* made absolute. For Plaintiff it was urged, that the Statute 11 & 12 *W.* 3. requiring no Sheriff to hold to Bail in Counties Palatine, on Process out of *Westminster Hall* under 20*l.* was virtually repealed by the Statute 12 *Geo.* 2. c. 29. which requires Bail in all Cases where Affidavit shall be made that the Cause of Action amounts to 10*l.* the latter being a general Law, and extending throughout *Great Britain* (*Scotland* only excepted.) *Per Cur'*: Affirmative Words, without Negative, are not sufficient to repeal a former Law; the Nature of the Case, and the Intent of the Legislature, are to be considered. Both the Statutes have the same Title, *viz.* To prevent vexatious Arrests, and both were made in Favour of the Liberty of the Subject; they may stand together. In County Palatine 20*l.* must still be sworn due to require Bail. By a Rule of this Court, *Michaelmas* 1654, Bail is required for 20*l.* and for no less: And though a Practice was introduced in Chief Justice *North's* Time to hold to Bail for 10*l.* (*History of the Common Pleas*, fol. 37.) yet the old Rule remains undischarged. *Skinner* for Defendant; *Belfield* for Plaintiff.

Claxton, Assignee of the Sheriff, *against* Hyde and his Bail.

Defendant moved, that the Exception against the Bail in the Original Action might be struck out, and the Bail recorded, that he might verify his Plea of *Comperuit ad Diem*; insisting, that the same Bail being put in before a Judge who were Bail to the Sheriff, and Plaintiff having taken an Assignment of the Bail-Bond, had thereby waived his Exception, and the Bail above were become absolute. A Rule was made to shew Cause. Cases quoted for Defendant, *Grosvenor against Soames*, 6 Mo. *Hampson against Sower*, Easter 1729. *Haman against Bennett*, Hil. 12 Geo. 2. in B. R. *Hambly against Dowharty*, Cases in C. B. fol. 61. *Walsh against Haddock*, Hil. 2 Geo. 2. Upon shewing Cause, it was urged for the Plaintiff, that the Practice of this Court is settled by the Rule of *Trin.* 3 & 4 Geo. 2. Unless Bail be perfected, (that is justified in Court) within four Days after Exception, Plaintiff may proceed on Bail-Bond, by the Rule of *Mich.* 6 Geo. 2. Plaintiff may except against the Bail above, though the same as to the Sheriff; and *Ormond against Griffith*, Hil. 7. Geo. 2. is a Case in Point. *Notes of Cases* fol. 51. *Per Cur'*: Let the Rule be discharged. As the Practice of this Court stands at present, Plaintiff is regular to proceed upon the Bail-Bond. The Assignment doth not admit the Sufficiency of the Bail. The Sheriff may be insufficient, and then, if Plaintiff cannot proceed on the Bail-Bond, he has no Remedy. *Skinner, Willes and Draper*, for Defendant; *Prime and Agar* for Plaintiff.

Clarke *against* Harbin. Hil. 16 Geo. 2.

MAY 20th 1742, a Writ of *Ha. cor.* returnable *immediatè*, was lodged at the Palace Court, to remove a Plaint from thence into this Court; and nothing further was done till 20th November last Term, when Plaintiff served Defendant with a Rule to put in Bail. Defendant insisted, that Plaintiff should have served such Rulé within two Terms after the *Ha. cor.* brought, and was now too late. The Court held, That if Defendant had put in Bail upon his *Ha. cor.* without staying to be forwarded

forwarded by a Rule for Bail, and Plaintiff had not declared within two Terms after Bail put in, the Cause would have been out of Court, but the Rule for Bail is not limited to any particular Time. Rule to shew Cause why Proceedings should not be stayed, was discharged. *Birch* for Plaintiff; *Agar* for Defendant.

Tribe and others, Assignees, &c. of a Bankrupt's Effects, *against* Pratt. Hil. 16 Geo. 2.

ONE of the Plaintiffs, in order to hold Defendant to Bail, made an Affidavit that Defendant was indebted to Plaintiffs 1300*l.* as appeared by an Account under the Bankrupt's Hand. Defendant objected to this Affidavit, that the Account referred to by it, was not annexed or produced; that as the Bankrupt was living, and under the Power of the Assignees, he ought to have made the Affidavit; that Plaintiff who makes Affidavit, does not swear he believes the Sum to be due; that this Case differs widely from that where Plaintiff is an Executor or Administrator, who (Testator, &c. being dead) can only swear to Debts as they appear from Securities or Books of Account. The Court thought a positive Affidavit of the Debt necessary, unless it had appeared that the Bankrupt refused to make the same. And the Rule was made absolute for a Common Appearance. *Prime* for Defendant; *Skinner* for Plaintiff.

Seaber *against* Powell. East. 16 Geo. 2.

RULE to shew Cause why Proceedings on the Bail-Bond should not be stayed on Payment of Costs, discharged, Plaintiff having been delayed of Trial, and Defendant and his Bail refusing to consent that the Bail-Bond should stand for Plaintiff's Security. Defendant insisted, that Plaintiff not having declared *de bene esse*, had delayed himself; but the Writ in the Original Action being returnable last Term, that Objection will not hold. Declarations *de bene esse* are necessary to take the Advantage of the Term, if the Writ be of the first or second Return, where Defendant is to plead without Imparance, but not otherwise. *Prime* for Plaintiff; *Agar* for Defendant.

Lifter *against* Wainhouse. Trin. 16 & 17 Geo. 2.

PLaintiff excepted against the Bail, and for Want of a Justification in Time, proceeded upon the Bail-Bond. A Declaration was delivered in the Original Action, after the Time for putting in Bail expired, as a Declaration *de bene esse*. Defendant moved to stay Proceedings on the Bail-Bond; insisting, that this Declaration must be looked upon as delivered in Chief, and consequently as a Waiver of the Exception; and that the Demand of a Plea confirms it. The Court over-ruled the first Objection, as to the Declaration, but held the Demand of a Plea to be a Waiver of the Exception; 'tis admitting Defendant to be in Court, and in a Condition to plead. Rule absolute to stay Proceedings on the Bail-Bond. *Prime* for Plaintiff; *Boote* for Defendant. Justice *Burnett solus in Cur.*

Jackson *against* Knight.

ab. Cont. 227 P. 252

AFTER final Judgment, Defendant put in and justified Bail, and obtained a Rule to shew Cause why a *Superfedeas* should not issue to discharge him out of Custody. The Court discharged the Rule. After final Judgment 'tis too late to put in Bail; the Recognizance of Bail plainly imports that it must be entered into before Defendant be condemned in the Action.

Francis *against* Taylor. Hil. 17 Geo. 2.

ABail-Bond taken upon a *Capias ad respondendum* sued out of this Court, was assigned by the Sheriff to Plaintiff; and Bail above not being put in within the limited Time, Plaintiff's Attorney, for the Sake of serving the Bail with Process within last Term, put the Bail-Bond in Suit in the Court of King's Bench, where his Writ was returnable on the *quarto die post* (the last general Return in this Court within last Term being then expired.) The Court thought this Proceeding unwarrantable. By an old Rule, Attornies of this Court are ordered not to bring Actions in other Courts; and the Act of Parliament directing

directing the Assignment of Bail-Bonds, gives the Court, after such Bonds are put in Suit, an equitable Jurisdiction to stay Proceedings, and to let a Defendant in to try the Merits of the Original Action, upon reasonable Terms; which Jurisdiction cannot be exercised, unless the Original Action, and the Proceedings upon the Bail-Bond, were in the same Court. The Rule to set aside the Proceedings upon the Bail-Bond was made absolute, with Costs, by Consent of Plaintiff and his Attorney. *Skinner* for Defendant; *Prime* for Plaintiff and his Attorney.

Malland *against* Jenkins.

TO a *Sci. facias* on a Recognizance of Bail on a Writ of Error, not setting forth the Condition of the Recognizance, Defendant pleaded *Nul tiel Record*, and Issue being joined thereon, Defendant insisted, That the Record of the Recognizance, with a Condition subjoined, was not a Verification of the Recognizance, without Condition set forth in the *Scire facias*; That the Condition is Part of the Recognizance itself, and doth not operate by Way of Defeazance. Mr. *Warden* (an Assistant to the Clerk of the Errors) reported, That this *Scire facias* is made out by the Clerk of the Errors, and not by the Plaintiff's Attorney; That he has known the Office sixteen Years, and the *Scire facias* has always been as in this Case, without setting forth the Condition of the Recognizance; That the Condition of the Recognizance in Error is not incorporated, as it is in a Recognizance of Bail on a *Capias ad respondendum*, but is subscribed by Way of Defeazance. The Court held the *Scire facias* good, and gave Judgment for the Plaintiff on the Issue of No such Record. The Recognizance and Condition, in this Case, are two distinct Records.

Books and Cases quoted by the Counsel : *Lilly's Ent.* 557. *Officina Brevium* 262, 269, 284. *Perry against Collins*, *Trin.* 10 & 11 *Geo. 2.* *Cross against Porter*, *Mich.* 11 *Geo. 2.* *Agar* for Plaintiff; *Hayward* for Defendant.

Smithson, Baronet, Assignee, &c. *against* Thomas Smith, Gent. an Attorney. Easter 17 Geo. 2.

William Smith, Gent. Defendant in the Original Action, was sued by the Addition of *Clerk*, and entered into a Bail-Bond by that Addition. Bail above was put in within due Time for *William Smith, Gent.* who was arrested by the Name and Addition of *William Smith, Clerk*; and Plaintiff having excepted against the Bail, they justified in Court; Plaintiff declared *de bene esse* in the Original Action, and Defendant pleaded in Abatement within Time. Plaintiff took the Plea out of the Office, stayed Proceedings near twelve Months, and then filed a Bill as Assignee of the Sheriff, against *Thomas Smith, Gent.* an Attorney, one of the Bail in the Bail-Bond; insisting, that Defendant in the Original Action was estopped from pleading in Abatement; that the Bail put in as above, is no Bail for *William Smith, Clerk*; and that Defendant ought to be left to his Plea of *Comperuit ad diem*. The Court thought the Application by Motion proper; and that the original Defendant was not estopped from pleading in Abatement by the Bail-Bond, which must be *prout* the Writ. That the Manner he pursued of putting in Bail, is the constant regular Method, and the only Way to save the Advantage of pleading in Abatement. Rule absolute to stay Proceedings, with Costs. *Willes* and *Bootle* for Plaintiff; *Prime* for Defendant.

Davies, Executor, *against* Leckie. Mich. 18 Geo. 2.

THIS was an Action of Debt brought on a Judgment recovered in the Palace Court. Defendant moved for a Common Appearance; insisting, that as Bail was filed in the Action wherein Judgment had been obtained in the Palace Court, no Bail ought to be required in this Action. The Court refused to order a Common Appearance, Plaintiff having no Bail in this Court before.

Studwell *against* Bunton. Hil. 18 Geo. 2.

Defendant being a Seaman, in actual Service of the King, was arrested, and held to Bail in the Palace Court; he removed the Action by *Ha. corpus*, and was discharged by this Court on a Common Appearance *secundum Stat. 1 Geo. 2. cap. 14*, the Debt being under 20 *l.* Plaintiff objected, that Defendant had absented from the King's Service two Days after his Time of Leave given. But the Court held, that the Service continues whilst Defendant's Name remains in the Ship Books. *Draper* for Defendant; *Skinner* for Plaintiff.

Wilcox *against* Proffer and others. Easter 18 Geo. 2.

RULE absolute to quash two Writs of *Sci. facias* returned *Nihil* against Bail, who had rendered the Principal after Judgment. The *Ca. fa.* against the Principal, and the first *Sci. fa.* bearing Teste on one and the same Day, viz. 23d October last. *Willes* for Defendant; *Birch* for Plaintiff.

Paris *against* Stroud and his Wife. *Judges v. Notes Nov 59*
1 Feb R.P. 122-302 ab. 110.

Plaintiff made Affidavit for Bail, That Defendants, or one of them, are indebted for Board, Clothes, Jewels, &c. provided for the Wife; Defendant the Husband, an Infant, moved for a Common Appearance. The Court held, that if an Infant marries a Woman of full Age, (as in this Case) he is liable to her Debts; but thought Plaintiff's Affidavit not sufficiently certain. Plaintiff had Leave to make a new Affidavit, and explain what was due before Defendant the Wife was of Age, and what after; and whether the Debt, or any Part, became due before the Marriage, or after. Plaintiff made a new Affidavit accordingly; and the Sum for which Bail was to be given was moderated at a Judge's Chamber. *Skinner* and *Willes* for Defendant; *Draper* for Plaintiff.

Nutkins, Executor, *against* Wilkin. Hil. 19 Geo. 2.

JUDGMENT in Action on Bail-Bond, signed two Days after Plaintiff's Death, and the Suit thereby abated; Plaintiff gave Defendant Time to plead, and died before that Time expired. Now the Bail-Bond was put in Suit by the Executor of the late Plaintiff deceased, and Defendant applied to stay Proceedings. The *Capias* in the Original Action was returnable *Tres Mich.* and Plaintiff might have had Judgment in his Life-time, if Defendant had not made Default, by not putting in Bail above. Proceedings stayed in the Original Action, and on the Bail-Bond, on Payment of 43*l.* agreed to be the Debt and Costs in the Original Action and in this Action. No Costs in the first Action on Bail-Bond, wherein there was no Default by Defendant. *Prime* and *Draper* for Plaintiff; *Hayward* for Defendant.

Lawford *against* Gardiner and his Wife. Easter 19 Geo. 2.

BOTH Defendants arrested for a Debt due from the Wife *dum sola*; Bail above put in for both, and both rendered to the *Fleet* in Discharge of Bail. Motion to discharge the Wife, detained by mesne Process, not in Execution. If the Wife had been arrested before the Husband, she must have been discharged on Common Appearance; after the Husband is arrested she cannot be taken into Custody again. Case of Liberty. Rule absolute to discharge the Wife by *Supersedeas*, on entering Common Appearance. Mr. Justice *Burnett contra*. *Birch* for Defendant the Wife; *Leeds* for Plaintiff.

Follett *against* Trill and Bowen, Bail for Powell. Mich. 20 Geo. 2.

PLAINTIFF recovered Judgment in the Original Action brought in this Court, and laid in the County of *Surry*. Bail had been taken before a Judge, and after Judgment and *Ca. fa.* returned against the Principal, *Non est inventus*; *Sci. fa.*'s against the Bail on the Recognizance were brought in *Surry*, and after
two

two *Nichils* returned, Execution was awarded, and the Goods of the Bail taken *per Fi. fa.* Objected by the Bail, that the *Sci. fa.* ought to have been brought in the County of *Middlesex*, and not elsewhere; the Caption appearing by the Record of the Recognizance to be before the Chief Justice and his Brethren, in Court, as the Entry always is of a Bail on *Cepi Corpus* taken before a Judge at his Chambers. Rule to shew Cause why the Award of Execution and *Fi. fa.* should not be set aside, with Costs. The Court, after hearing Counsel on both Sides, held the Objection good, and made the Rule absolute, without Costs. Where the Caption of the Recognizance appears to be in another County, and is afterwards inrolled in *Middlesex*, (as in some other Cases) the *Sci. fa.* may be in either County; but where the Caption appears by the Record to be in *Middlesex*, the *Sci. fa.* must be in *Middlesex* also, and not elsewhere. A *Sci. fa.* to revive a Judgment is a Continuance of the Suit, and must be brought in that County where the original Action is laid. A *Sci. fa.* against Bail is the first Proceeding. *Allen* 12. *Mod. Cases in Law and Equity* 230. *Lutw.* 1282, 1287. *Dakon* against *Teafdale*, in this Court, *Easter* 2 *Geo.* 2. 2 *Salk.* 564.

N. B. Several of the Filazers attended, and reported the Practice as the Court held it to be, and that Filazer by whom the Bail-piece is filed, and who enters the Record of the Recognizance on his Roll, makes out the first *Sci. fa.* into *Middlesex*, or other proper County, as the Case requires; the second *Sci. fa.* (when necessary) is signed by the Prothonotary. *Willes* for Defendant; *Bootle* for Plaintiff.

Fuit tenus Hil. 44 Eliz. per 4 Just. q' Sci. fa. sup. Recogn. p't issuer al Vic. del lieu ou le Caption fuit. Et q' n'est ascum necessity q' il issera al Vic. Midd. ou est inrole proviso q' le Entrie soit fait accord't. Vide simile sup. Recogn. capt. coram J. Dyer apud Castrum Lincoln. Hil. 6 Eliz. Rot. 1887. Pasch. 35 H. 6. Rot. 37. C. B. Suff. Recogn. to pay Money to one, taken by Pryot, C. J. at St. Edmund's Bury. Offic. Brev. fo. 17. & fo. 316. Hob. 195.

Littleton, Executor, *against* Hanson. Mich. 20
Geo. 2.

Plaintiff moved for Leave to take out Execution, no Bail being put in, or Writ of Error brought by Defendant; and the Action being in Debt on Bond, conditioned only for Payment of Money, according to the true Intent and Meaning of an Indenture, and not Performance of Covenants; also Rule to shew Cause. Upon shewing Cause, *Lucas against Armstrong, Mich. 12 Geo. 2.* was quoted. And the Court held, That by the Statute 3 *Jac. cap. 8.* Bail was required. If the Bond had been generally for Performance of Covenants in an Indenture, and the only Covenant in that Indenture for Payment of Money, Bail must be given on Writ of Error. Time was given to Defendant to put in Bail. *Hayward* for Plaintiff.

Poor *against* Coulthurst. Hilary 20 Geo. 2.

Defendant, who had been arrested by a *Testat' Capias* from *London* into *Devonshire*, returnable the first of last Term, now perfected Bail, and moved to stay Proceedings on the Bail-Bond, on Payment of Costs; insisting, that as no Declaration in the original Action had been delivered *de bene esse*, Plaintiff had not lost a Trial, and therefore the Bail-Bond ought not to stand as a Security. The Court held, That as Plaintiff might have tried his Cause last Term without a Declaration *de bene esse*, he has been delayed of Trial. Rule, by Consent, to stay Proceedings on Bail-Bond on Payment of Costs, Pleading the General Issue, and Taking short Notice of Trial at the Sitting after Term; Bail-Bond to stand as a Security, and whenever that is the Case, it is understood that Plaintiff may at Pleasure sign Judgments in the Actions on the Bail-Bond. *Bootle* for Defendant; *Prime* for Plaintiff.

Peefton *against* Tracy, Esq; 4th Febr.

Defendant arrested last Term, but no Bail-Bond taken; the Sheriff being called on, returned a *Cepi Corpus*; and being
served

served with a peremptory Rule to bring in the Body, Bail was Yesterday perfected in Court; the Rule to bring in the Body discharged.

Note; The Time for bringing in the Body being expired, and Plaintiff intitled to move for an Attachment before the Bail perfected, the Sheriff was ordered to pay the Costs of the Application against him. *Hayward*.

Baskerville, Esquire, *against* Chaffey. Easter 20
Geo. 2.

In Error. **O**bjected to one of the Bail, that he was a Palace Court Officer; but over-ruled, and the Bail allowed. The Rule of this Court to prevent Sheriffs Officers, and other Persons concerned in the Execution of Process, from being Bail, extends only to Process of this Court, whereon Defendants having been bailed by the Officers who arrested them, were greatly imposed on and abused. (*Absente Capitali Jussum*) *Agar* for Plaintiff in Error; *Hayward* for Defendant in Error.

Castell *against* Grave, one, &c. on a Bail-Bond. Mich.
21 Geo. 2.

THE Court ordered all Proceedings to be stayed; it appearing, that the Defendant in the original Action died before Judgment could have been obtained thereon against him. *Boote* for Defendant; *Prime* for Plaintiff.

Evening *against* Spoorman. Mich. 22 Geo. 2.

Defendant was arrested 26th *May* 1747, and gave a Bail-Bond, but died without putting in Bail above. Plaintiff lay still till twelve Months after the Arrest, and then took an Assignment of and put the Bail-Bond in Suit. The Bail moved to stay Proceedings, and obtained a Rule to shew Cause, which was now discharged; it appearing, that if Defendant had put in Bail in Time, he lived long enough for Plaintiff to have proceeded to Trial, and to have

had Judgment and Execution in his Life-time. *Poole* for the Bail ; *Boyle* for the Plaintiff.

Holland, an Attorney, *against* Ereskine. Same Term.

RULE to shew Cause why a Common Appearance should not be accepted for Defendant, as a Feme Covert, discharged. Where the Marriage is clearly made out, the Court will order a Common Appearance ; but in this Case, Defendant appears to have acted as a Feme Sole for twelve Years, which makes the Matter doubtful. *Prime* for Defendant ; *Boyle* and *Poole* for Plaintiff.

Easter 22 Geo. 2.

THE producing a Duplicate of Defendant's Discharge as a Fugitive, held sufficient ; and Affidavits on Plaintiff's Part, to shew that Defendant was not abroad beyond the Seas 1st *January* 1747, refused to be read. This should have been objected at the Sessions : It may be pleaded, but cannot be entered into on the Question of, Bail or No Bail ? Rule made in the Treasury for a Common Appearance.

Swarbreck *against* Wheeler. Mich. 23 Geo. 2.

Affidavit for Bail made by a third Person, That Defendant was indebted to Plaintiff 500*l.* and upwards, as appears by a stated Account, attested by the Consul at *Oporto*. Objected to by Defendant as insufficient ; but the Defect being supplied by a subsequent Affidavit of Defendant's acknowledging the stated Account, Rule to shew Cause why a Common Appearance, was discharged. *Prime* for Defendant ; *Willes* for Plaintiff.

Knight *against* Remy.

Defendant having produced his Certificate as a Bankrupt, allowed and confirmed, moved for a Common Appearance in this Action, which was Debt on Bond for Payment of Money by Installments, some of which were not payable till after the Bankruptcy; and the Question was, Whether this be a Debt discharged by the Certificate, or not? After the first Default of Payment, the Bond is forfeited, and the Penalty is the Debt in Law. The Court will not enter nicely into the Matter on Bail or No Bail. Rule for Common Appearance. *Prime* for Defendant; *Willes* for Plaintiff.

Fowlis, Esquire, *against* Grosvenor. Hilary, 23 Geo. 2.

THE *Capias ad respondendum* was returnable 15 *Mart.* last. 4th *Dec.* Bail was put in before a Judge. 7th *Dec.* Plaintiff excepted against the Bail, and 15th *Dec.* put the Bail-Bond in Suit for Want of a Justification within four Days after Exception, before a Judge at his Chambers, or Time obtained to perfect Bail; insisting, that though the Exception was in Time of Vacation, Defendant ought to have done every Thing in his Power towards perfecting the Bail. The Court held, That a Justification before a Judge is no Justification, but by Plaintiff's Consent. That by the General Rule of Court, requiring Bail to be perfected within four Days after Exception, must be meant the next four Days in Term. The Bail in this Case were justified in Court the second Day of this Term. The fair Way would be to give Notice of a Justification in Court within four Days after Exception, but 'tis not requisite, two Days Notice is sufficient. Rule absolute to stay Proceedings on Bail-Bond, without Costs. *Prime* for Defendant; *Leeds* for Plaintiff.

Goswell, one, &c. *against* Hunt. Easter 23 Geo. 2.

Defendant having put in Bail before a Judge, Plaintiff gave Notice of an Exception against them, (but did not enter his Exception on the Bail-piece) and for Want of a Justification in

Court, served the Sheriff with a peremptory Rule to bring in the Defendant's Body within six Days, for Want whereof Plaintiff moved for an Attachment against him. The Court held, That an Exception in Writing on the Bail-piece, and Notice thereof to Defendant's Attorney, are both necessary; and that, for Want of the former, the Bail (which had stood more than twenty Days without an Exception entered) was become absolute, and ordered Proceedings against the Sheriff to be stayed. *Willes* for Plaintiff.

Hooper *against* Comings.

THE Bail, who resided in the Country, entered into Recognizance before Mr. Justice *Birch* in Town, and being excepted against, sent up an Affidavit of Sufficiency. They were permitted to justify by that Affidavit, without attending personally. No Opposition made on Plaintiff's Part. *Pool* for Defendant.

Price and another *against* Street.

Plaintiff served *Cooper*, late Sheriff, with peremptory Rule to bring Defendant's Body into Court within six Days; whereupon Defendant put in Bail, and justified *de bene esse* before a Judge, and for want of an Exception within twenty Days, the Bail became absolute. Plaintiff insisted, that tho' no Exception was taken, yet the Bail ought to have been perfected by Justification in Court (which is bringing in the Body) within the six Days limited by the Rule: But the Court held otherwise. Rule on late Sheriff to shew Cause why Attachment, discharged. *Boote* for late Sheriff; *Willes* for Plaintiff.

Baxter *against* Overton. Hil, 24 Geo. 2.

Defendant produced a Duplicate of his Discharge as an insolvent Debtor, and after having put in Bail before a Judge, moved in the Treasury to be discharged on entering a Common Appearance; which, upon hearing the Attornies on both Sides, was granted, and the Bail-piece ordered to be vacated, Defendant being

being considered as in Custody of his Bail, and his Person being by the Statute to be discharged.

Hutchinson *against* Hardcastle. Easter 24 Geo. 2.

WRIT returnable last *Michaelmas* Term; Bail was taken before a Commissioner in the Country; Notice thereof given to Plaintiff's Attorney there, and the Bail-piece transmitted to *London* to Defendant's Agent; he incautiously filed it with the Filazer, (who as incautiously received it, without first being allowed by a Judge.) Plaintiff lay by till after last Assizes, and then took an Assignment of, and put the Bail-Bond in Suit. The Court ordered the Filazer to attend a Judge for his *Allocatur*; gave Plaintiff Leave to except against the Bail, if he thought fit, and stayed Proceedings on the Bail-Bond upon Payment of Costs. Plaintiff's Counsel urged, that he had been delayed, and lost a Trial; but such Delay is through his own Laches; he might have put the Bail-Bond in Suit much earlier than he did. *Prime* and *Willes* for Defendant; *Bootle* for Plaintiff.

Roe, on the Demise of Fenwick, and others, *against* Pearson, in Ejectment in Error. Easter 24 Geo. 2.

MOtion to stay Proceedings by Defendant in Error for Want of better Bail, Plaintiff in Error having entered into a Recognizance, pursuant to the Statute 16 & 17 *Car. 2.* in the Value of two Years mesne Profits only, and double Costs. Objected, That by the Practice of this Court, the Recognizance ought to be in the Value of two Years and a Half mesne Profits, though in the King's Bench two Years Value is sufficient. The Statute leaves the Sum to the Discretion of the Court, and gives a Writ of Enquiry as to mesne Profits and Damages. The Court thought two Years Value a reasonable Sum, and stayed Proceedings on the Judgment pending the Writ of Error; made a general Rule, that for the future these Recognizances shall be taken in the Value of two Years Profits and double Costs. *Bootle* for Defendant; *Pools* for Plaintiff in Error.

Ray and others *against* Hufley.

RULE made absolute (on Affidavits of Service, no Cause being shewn to the contrary) for Leave to enter an *Exoneretur* on the Recognizance of Bail. Defendant, pending the Action having become a Bankrupt, and obtained his Certificate allowed and confirmed. *Boote* for Defendant.

N. B. This had been done in the King's Bench; 'tis a new Practice, introduced to discharge the Bail in a summary Way, without putting them to the Trouble and Charge of surrendering the Principal, as formerly; though by the Bankrupt Act 5 Geo. 2. Power is given to a Judge to order the Bankrupt, after such Surrender, to be discharged,

Wilson and others *against* Lafortune. Trin. 24 & 25
Geo. 2.

Plaintiff, after a *Ca. fa.* returned against the Principal, filed a Bill in an Action of Debt on the Recognizance against *Wall*, an Attorney, one of the Bail first put in, (though after Exception two other Bail justified in Court) and sued out Process against *C. D.* another of the Bail, on whom the Process was served two Days only before the Return, (though four Days are requisite.) On Motion of *Boote* for *Wall* and *C. D.* the Court made a Rule for Plaintiff to shew Cause why Proceedings against *Wall* and *C. D.* should not be stayed. On shewing Cause, the Court held, in answer to an Objection of Plaintiff's Counsel, that the Affidavit was properly intitled in this the Original Action. That the proceeding against *Wall* as an Attorney, by Bill, of which he complained, was not irregular; but that other Bail having justified, he was discharged. Rule absolute to stay Proceedings against *C. D.* because he was not served with the Writ in Time; and against *Wall*, because other Bail had justified as aforesaid. And the Court ordered *Wall's* Name to be struck out of the Bail-piece, and the Entry of the Recognizance to be amended accordingly, and gave *Wall* his Costs, *Willes* for Plaintiff,

Norton *against* Lutwidge. Mich. 25 Geo. 2.

MOTION by Defendant for a Common Appearance, on producing a Duplicate of his Discharge at the Sessions of the Peace, under the late Statute, as a Fugitive for Debt. Plaintiff objected, that Defendant was an *Irishman*, and instead of flying from his native Country, fled to *Ireland*, as mentioned in the Duplicate; and that *Ireland* is not within the Words of the Statute, (‘ Foreign Parts.’) The Court did not think it necessary to give an Opinion whether Defendant was within the Statute, or not; or whether, on the Face of the Duplicate, the Sessions had exceeded their Jurisdiction. The Quarter-Sessions is to determine as to immediate Liberty, afterwards the Court, or a Judge, are to discharge Defendant on producing his Duplicate. Plaintiff may put the Point on Trial, but Defendant must not remain *in vinculis* till the Determination. Rule absolute for a Common Appearance. *Wynne* for Defendant; *Willes* for Plaintiff.

Sanders, Esquire, late Sheriff, *against* Spincks. Mich. 25 Geo. 2.

AN ACTION was brought in 1748 by *Chetnam*, the original Plaintiff, *this case does not mention* against *Sibrell* the original Defendant; soon after which *Sibrell* became a Bankrupt, and obtained his Certificate *then a time he allowed and confirmed*: Notwithstanding which, the Bail-Bond *lost - 2. ga:* was lately put in Suit, in the Sheriff's Name, against *Spincks* *Corp. 71 -* the present Defendant, one of the Bail, and on his Application a Rule was made to shew Cause, and afterwards absolute, to stay the Proceedings. *Draper* for Defendant; *Boyle* for Plaintiff.

Mayo *against* Weaver. Easter 25 Geo. 2.

RULE was obtained by Defendant to shew Cause why Plaintiff should not strike out the Exception entered against the Bail, in order that Defendant might render himself in their Discharge; Defendant insisting, that as Plaintiff had not marked his Declaration

Declaration to be delivered *de bene esse*, he had accepted the Bail: But it appearing, that by a Judge's Order ten Days Time had been given Defendant to perfect Bail, Plaintiff to declare without Prejudice, Defendant to rejoin *gratis*, and to take Notice of Trial for the last Sitting within last *Michaelmas* Term; in Consequence of which Order Issue was joined, the Cause entered, made a *Remanet*, and tried at the Sitting after last *Michaelmas* Term, when Plaintiff had a Verdict: The Rule was discharged. Defendant should have perfected his Bail in Time, (which he has not done) and then might have rendered if he had thought fit. *Willes* and *Agar* for Defendant; *Prime* for Plaintiff.

Whitehead, Administrator of Reeveley, *against* Gale,
Bail for Stewart. Hil. 25 Geo. 2.

Judgment was entered against the principal Defendant, at the Suit of Plaintiff's Intestate, in *Michaelmas* Term 1741, after a Writ of Enquiry executed in the Vacation preceding. In 1748 the principal Defendant retired to *Bruges* in *Flanders*. In *Hilary* Term 1748 the Judgment was revived by Plaintiff, by one *Scire facias* returned *Nichil habet*; and in *Easter* Term following a *Capias ad Satisfaciendum* was returned *Non est inventus*; soon after which the principal Defendant died abroad; a *Capias ad respondendum* on the Recognizance was sued out against *Gale*, one of the Bail, returned 8 *Hilary* 1750, and he applied to stay Proceedings, because by the Intestate's and Plaintiff's Delay of proceeding against the Bail till after the Death of the Principal, *Gale* was prevented from surrendering the Principal Defendant to the *Fleet* in Discharge of his Bail, which he would have done, had the Bail been recently proceeded against in the Principal's Life-time. After this Matter fully debated by Counsel, and Consideration had, the Court determined, That they could not relieve the Bail on Motion. A Render of the Principal after a *Capias ad Satisfaciendum* returned, is not a good Plea, and no Instance can be shewn that any of the Courts of *Westminster* have relieved Bail on Motion, where the Principal died after a *Ca. sa.* returned. Though by the Rules and Practice of the Court, Indulgence has been given to Bail to render the Principal till the *quarto die post* of the first *Scire facias*, if returned *Scire feci*; or the

the *Alias Scire facias*, if returned *Nichil habet*; or the *quarto die post* of a *Capias ad respondendum* on the Recognizance, served four Days before the Return. Yet this extends only to Cases where the Principal can be rendered, and not to Cases where by his Death a Render is become impossible. The Recognizance is absolutely forfeited immediately after a *Ca. sa.* returned; and if the Principal dies afterwards, before a Render, the Bail are fixed; the deferring of the Render till after the Return of the *Ca. sa.* is at the Risque and Peril of the Bail; they ought to render at the Return, tho' where the Principal is to be had, and is rendered afterwards, within the Time allowed by the Practice of the Court, yet the Bail have first been guilty of a Default; where the Principal is not to be had, the Bail must suffer; the Enlargement of the Time is Indulgence only where Plaintiff can be put in the same Condition by a Render, as if it had been at the Return of the *Ca. sa.* but where a Render cannot be made, the Election of the Bail is over, 'tis not in the Power of the Court to relieve, though Favour of Bail is Favour of Liberty; and 'tis probable this Court may make a general Rule to speed Plaintiffs, that Bail for the future may know when they are discharged; *vide Cro. Jac.* 91. *Williams* against *Vaughan*. Same Book 165. *Timperly* against *Coleman*. 1 *Salk.* 101. 6 *Mod.* 132. *Rule of Court* 1654. 1 *Roll's Abr.* 336. 2 *Ld. Raymond* 1452. *Barry* against *Perry*. 1 *Sir Wm. Jones* 29. *Sparrow* against *Southgate*. *Mich. 2 Geo.* 2. *King* against *Yates*. Rule to shew Cause why Proceedings should not be stayed, discharged. *Prime* for Defendant; *Willes* and *Poole* for Plaintiff.

Garth against *Green*. *Trin.* 25 & 26 *Geo.* 2.

RULE to shew Cause why Recognizance of Bail should not be discharged, Plaintiff not being intitled to Bail by the Course of the Court, in this Action of Debt on Judgment, because Bail was given in the Original Action. The Rule was made absolute, no Cause shewn to the contrary. *Prime* for Defendant.

Reynoldson *against* Blades, (for Covenant broken) in
the Treasury. Easter 26 Geo. 2.

Plaintiff made an Affidavit, That Defendant entered into an Agreement with him in Writing, and covenanted to pay him 315*l.* for the Purchase of Land; that Plaintiff has been always ready to convey the Estate on Payment of the Purchase-Money, but Defendant refuses to pay and to take the Estate, whereby Plaintiff swears himself damnified 40*l.* Common Appearance ordered. No previous Application to a Judge. Damages uncertain. Old Cases, *Fleetwood against Poitier, &c.* are not to be followed. Where Damages can be reduced to a Certainty, as in Covenant for Payment of Money, or where a Tenant covenants with his Landlord to pay a certain Sum for every Acre of Land he plows up, or the like, Plaintiff is intitled to Bail, otherwise not, especially without Judge's Order previous. 'Tis not reasonable that Defendant should be held to Bail for such Damages as Plaintiff fancies he has sustained, and is pleased to swear to.

Julian *against* Shobrooke. Mich. 27 Geo. 2.

Motion on Behalf of Defendant's Bail, for Leave to make out a new Bail-piece, the old one, taken before a Commissioner in the Country, not being to be found on the Filazer's File, on Affidavit of Mr. *Limbrey*, Defendant's Agent, of its having been allowed and filed in May 1751, by his late Clerk deceased, as appeared by the Clerk's Account; and, as *Limbrey* believed, Defendant had been some Days in Custody of his Bail, but could not be surrendered for want of the Bail-piece. Defendant refused to consent to the filing of a new Bail-piece, or the Bail's entering into a new Recognizance, insisting that the Bail (who were present in Court) had Effects of his in their Hands sufficient to satisfy Plaintiff's Demands; which the Bail (examined on Oath by the Court) having denied, and it appearing that they originally became Bail for Defendant at his Request, the Court gave them Leave to put in Bail *de novo*; which they did, and surrendered Defendant to the Fleet Prison in their Discharge. *Willes* for the Bail; *Poole* for the Defendant.

Stapleton

Stapleton *against* The Baron de Stark. Hil. 27 Geo. 2.
1754.

Plaintiff made an Affidavit for Bail, That Defendant was indebted to her 1000*l.* and upwards, for Money lent; whereupon Defendant having been arrested, moved to be discharged on entering a Common Appearance, shewing the Court by Affidavit, That Defendant had given promissory Notes for the Plaintiff's whole Demand, some of which were become due and payable, and those Notes had been put in Suit in the Court of King's Bench, by Action still pending; that the Residue of the Debt for which this Action was brought, is secured by Notes not due or payable. Plaintiff's Counsel admitted the Fact, but produced an Affidavit from Plaintiff, shewing, that she had good Reason to think the Defendant would suddenly leave the Kingdom, and therefore she caused him to be arrested for the Residue of her Debt for Money lent, which she was advised she might do, though she had Defendant's Note for it, her original Debt for Money lent not being extinguished, as it might have been had she taken a Bond, or higher Security. The Court thought the Matter improper to be discussed on this Motion. Rule to shew Cause why Common Appearance discharged. *Willes* and *Draper* for Defendant; *Prime* for Plaintiff.

Whitfield *against* Whitfield.

THIS Action was brought (as appeared by Plaintiff's Affidavit) on Defendant's Bond to indemnify Plaintiff against Securities which he had entered into for Defendant, but Plaintiff swore to no certain Dampnification, nor to his being arrested on any of these Securities, though Actions had been brought thereon against him, and he was obliged to abscond. The Court declared, that to hold to Bail in Actions on Bonds to save harmless, &c. as well as in Actions of Covenant, Plaintiff must swear positively and certainly how, and for how much, he is dampnified; the Court cannot take it by Implication. Rule absolute for a Common Appearance. *Willes* for Defendant; *Pock* for Plaintiff.

Barnard against Mordaunt, Esquire. East. 27 Geo: 2.

Defendant, a Member of the last Parliament, having been arrested and held to Bail before the Expiration of Forty Days (*Privilege claimed by the Commons*) next after the Dissolution, applied to have the Bail-Bond delivered up. In 2 *Lev. 72.* the Privilege is said to be twenty Days before and after Session and Prorogation. According to *Pryn*, the Wages to Parliament Men continue no longer than three Days after the Parliament is up. Vide *Pitt's Case, Comyns 444.* By Consent, Rule absolute for delivering up Bail-Bond, on entering Common Appearance. *Prime* for Defendant; *Draper* for Plaintiff.

Lovibond against Faikney. Trin. 27 & 28 Geo. 2.

Defendant put in Bail + 25th *May* (two Days before the End of last Term;) the Day after the Term (28th *May*) Plaintiff excepted against the Bail, and for want of Justification before a Judge, took an Assignment of, and proceeded on the Bail-Bond. Defendant 8th *June* (after the Bail-Bond assigned) gave Notice to justify his Bail in Court on the first Day of this Term, which he did accordingly, and then applied for Stay of Proceedings on the Bail-Bond. Rule absolute for that Purpose without Costs. *Prime* for Defendant; *Willes* for Plaintiff.

Filewood against Smith. Mich. 29 Geo. 2.

A Palace-Court Officer offered to justify himself in Court as one of Defendant's Bail; Plaintiff objected, that no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process, can be Bail by the general Rule of *Mich. 6 Geo. 2.* Defendant answered, that, by a Case *Baskerville, Esq; against Chaffrey*, in Error, *East. 20 Geo. 2.* the Court had determined that said Rule related only to Bailiffs executing Process of this Court. The Court exploded the Doctrine of that Case, which was determined (as thereby appears) in the Absence of the Lord Chief Justice, and rejected the Bail

Bail offered. They held that the Rule extends to all Bailiffs, Officers, and others concerned in the Execution of Process. The Rule was made for the Benefit of Plaintiffs, not merely to prevent Impositions and Abuse on Defendants, as in said Case mentioned. An antient Rule of this Court *Mich. 1654*, says that no Attorney shall be Bail, and a Modern Rule *Mich. 6 Geo. 2*, says that no Attorney of this or any other Court, or any Person practising as such, shall be Bail; the Rule is the same with respect to Officers executing the Process of this and all other Courts. *Willes* for Plaintiff; *Davy* for Defendant.

French against Knowles. Hil. 29 Geo. 2.

Defendant, after a Judge's Order for Time to put in and perfect Bail, put in Bail, and surrendered himself to the *Fleet* in Discharge of his Bail. Plaintiff's Attorney apprehending the Surrender, without previously perfecting Bail by a Justification, to be irregular, proceeded upon an Assignment of the Bail-Bond; but the Court held such Proceeding to be wrong. Before a Surrender Defendant is delivered to his Bail, and supposed to be in their Custody; by the Surrender the Custody is altered, and Defendant is in Prison; the Worth and Substance of the Bail, who by the Surrender are discharged, is totally immaterial. Rule absolute to set aside the Proceedings on the Bail-Bond without Costs. *Davy* for Defendant; *Willes* for Plaintiff.

Woodnott against Lilly. Easter 29 Geo. 2.

RULE made absolute to set aside Proceedings on Bail-Bond with Costs. The *Capias* in the original Action was returnable 8 *Pur'* last. Defendant put in Bail above last Vacation in Time; Plaintiff excepted against the Bail; whereupon Defendant's Attorney applied to Plaintiff's Attorney to know whether he would accept a Justification at a Judge's Chambers or not, to which Plaintiff's Attorney gave no Answer; but for want of such Justification took an Assignment of the Bail-Bond, and put the same in Suit. Defendant gave Notice of Justification in Court for the first Day of this Term; but the Bail not then attending, Defendant

Defendant obtained a few Days Time to perfect Bail, and then justified in Court. Where the Exception against Bail is in Vacation Time, or so late in Term that Defendant cannot regularly give Notice, and justify within such Term, he has by the Course of the Court Time to justify 'till the 4th Day of the Term next succeeding, (inclusive.) A Justification in the Interim before a Judge at his Chambers is not necessary, 'tis never of any Use, unless where Plaintiff's Attorney to forward the Cause, as in this Case he might have done, consents to accept it (when offered) absolutely in the same Manner as if in Court. *Vide Fowlis, Esquire, against Grosvenor, Hil. 23 Geo. 2. Wilson for Defendant; Davy for Plaintiff.*

Morley, Assignee, *against Carr.* Same *against Delany.*
Easter 29 Geo. 2.

ON a Bail-Bond made for the Appearance of *Dowdall*, the *Capias* in the original Action was returnable the first Return of last *Hilary* Term. Defendant obtained Time by several Orders to perfect Bail 'till the last Day of that Term; taking Notice of Trial for the Sitting after Term in *Middlesex*; but Bail not being perfected, the Bail-Bond was assigned and put in Suit. *Dowdall* the Defendant in the original Action died 8th *April*; the present Defendants applied to the Court to stay Proceedings on the Bail-Bond upon Payment of Costs, *Dowdall* dying before Judgment could have been obtained against him; and a Rule to shew Cause was made; upon shewing Cause the Rule was discharged, the Court being of Opinion that Plaintiff had been delayed; if Defendant had perfected Bail in Time, Plaintiff might have tried the original Action at the Sitting after last Term, and by the Statute 17 *Ch. 2. Ch. 8.* might have entered Judgment after *Dowdall's* Death. *Davy* for Defendant; *Prime* for Plaintiff. *Per Cur'*: Defendant *Dowdall's* Administratrix shall be let in to try the Merits of the original Action if she thinks fit; but this she did not choose.

Norman *against* Beard.

A Former Action was brought by Plaintiff and his Wife, wherein Defendant was arrested, and imprisoned for want of Bail, which Action was discontinued, and Defendant charged *de novo* in Custody. Actions. Plaintiff only (without his Wife) for the same Sum, and Cause of Action. Rule absolute for Common Appearance, and Superfedeas. *Davy* for Defendant; *Hewitt* for Plaintiff.

Smithson *against* Johnson. Trin. 29 & 30 Geo. 2.

THIS was an Action brought by Plaintiff against Defendant, upon Defendant's undertaking to indemnify Plaintiff for becoming Bail for him in a Cause in this Court 21st November 1754, wherein Judgment was obtained in Hilary Term 1755, and a *Ca. Sa.* issued against the Principal, tested 12 February, returnable *tres Pasche* (20 April) 1755, which being returned *Non invent.* and the Recognizance of Bail then forfeited, Proceedings were had against Plaintiff as Bail, so far that a *Fi. fa.* against his Goods was executed. A Commission of Bankrupt issued against Defendant 17th April 1755, whereupon he was declared a Bankrupt. Defendant now moved for a Common Appearance, urging that he having delivered up all his Effects for the Benefit of his Creditors should not be held to Bail, and that Plaintiff ought to prove his Debt, and come in as a Creditor for his Dividend under the Commission; but the Court were of Opinion, That though by Statute 7 Geo. C. 31. Debts from Bankrupts secured by Promissory Notes, and payable at future Days may be proved, and Dividends received, deducting a Rebate of Interest and Discount; and by Statute 19 Geo. 2. C. 32. the Obligees in *Bottomree* & *Respondentia* Bonds, and the Assured in Policies of Insurance are provided for. Yet this Case wherein the Cause of Action did not accrue 'till after the Bankruptcy, and where the Money was to become due upon a Contingency is not within any of the Statutes concerning Bankrupts, and consequently Plaintiff cannot be relieved under the Commission. Defendant must be held to Bail. Rule to shew Cause why Common Appearance discharged. *Pool* for Defendant; *Hewitt* for Plaintiff; *vide Tully* against

against *Sparks*, 2d *Strange* 867. *Crookbanks* against *Thornson*, 2d *Strange* 1160, 2d *Peer Williams* 497.

Barnsley against Archer.

Defendant being arrested for a Debt under 20*l.* applied to be discharged as a Seaman in his Majesty's Service under Statute 1 G. 2. C. 14. On Plaintiff's Part it was shewn, That Defendant was Armourer on board the *Wager* Man of War, and urged, That he ought not to be considered as a private Seaman; but as an Officer, and consequently is not within the Statute: To this it was answered for Defendant, that all these *petit* inferior Persons, (not Commission Officers) Armourers, Gunners, &c. are listed as common Seamen, and are no otherwise distinguished from the rest than by better Pay; but are liable to be disfrated, and reduced, and do Duty as common Seamen at the Captain's Pleasure. Referred to one of the Judges to be considered, and determined at his Chambers in the Vacation. Mr. Justice who afterwards made an Order to discharge Defendant on entering a Common Appearance. *Willes* for Defendant; *Prime* for Plaintiff.

Hodgson, Assignee of the Sheriff, against Michell. East.

33 Geo. 2.

UNDER Colour of a pretended Agreement by Plaintiff to stay Proceedings, Defendant had applied to stay the same; but the Agreement being denied the Rule was discharged: Then Defendant desired to be let in to try the Merits of the Original Action on Payment of Costs, which was granted, adding (Plaintiff having been delayed of a Trial) that the Bail-Bond should stand as Security. Plaintiff had applied for Leave to amend his Declaration on the Bail-Bond, which Defendant insisted by Rule of the Court was not amendable; but that is a Mistake, there is no such Rule, Declarations in Actions on Bail-Bonds may be amended as well as any other Declarations. The Court perhaps may have refused in some Instances to grant Leave to amend Writs of *Scire facias* against Bail, where by such Amendment the Bail might be deprived of the Advantage of surrendering the Principal, as perhaps they might do
in

in Case of the Faulty *Sci. fa.* quashed, and a New one sued out, *Poole* and *Hewitt* for Defendant; *Nares* and *Davy* for Plaintiff.

Beckman against De Witt. Trin. 33 Geo. 2.

AFTER a Trial in the Court of *King's Bench*, and Plaintiff nonsuited, he brought a new Bailable Action in this Court for the same Cause, wherein a Common Appearance was ordered to be accepted. for Defendant; for Plaintiff.

Springett against Roeloffse. Another Plaintiff *against* the same. A Third Plaintiff *against* the same.

AN Affidavit made on a Sheet of Treble Six-penny stamped Paper, That Defendant was indebted to the First Plaintiff in a Sum of Money, and so to the Second and Third Plaintiff, and thereon Defendant was arrested in Three separate Bailable Actions, all founded on this one Affidavit which was held to be irregular; there ought to have been Three distinct Affidavits, one in each Cause: This Affidavit made in Three Causes is not applicable to any one of them. Rules for Common Appearances made absolute. *Hewitt* Defendant; *Davy* for Plaintiffs.

Bradley against Pinchbeck. Hil. 32 Geo. 2.

EXception 14th *February* 1758, Bail justified in Court third Day within last *Easter* Term, same Bail as in Bail-Bond, Plaintiff shew Cause why Proceedings on Bail-Bond (lately put in Suit) should not be stayed with Costs, Bail cannot justify in Vacation unless by Consent, four Days to justify in full Terms are allowed after Exception taken in Vacation Time. Rule absolute, *Sans* Costs.

Crutchfield and others *against* Sewords. Easter 23
Geo. 2.

Defendant was arrested in the Original Action by a common *Capias* in *Kent*, whereupon he put in, and justified Bail in Court, Plaintiff declared in *London*, (not in *Kent*) whereby he relinquished and lost his Bail, and after Judgment obtained in the Original Action, brought an Action of Debt on that Judgment, wherein Defendant being again arrested, put in, and justified Bail in Court 2d *May*, the First Day of this Term; 4th *May* Defendant moved, and obtained a Rule to shew Cause why the last Reognizance of Bail should not be discharged, and why a Common Appearance should not be accepted in lieu thereof, and upon shewing Cause, and hearing Counsel on both Sides, the Rule was this Day (*May* 8th) made absolute. The established Practice is, that where Plaintiff has Bail in the Original Action, he shall have none in his Action on Judgment; where Plaintiff has no Bail in his Original Action, he shall have Bail in his Action on Judgment; but in this Case Plaintiff by his own Act gave up Bail in the Original Action, and therefore shall not compel Defendant to give Bail a Second Time, (Actions of Debt on Judgment are not to be encouraged after Judgment, Execution should follow, and not a fresh Suit.) By the general Rule, 8 *Geo. 2.* it is ordered that no Prisoner discharged, or ordered to be discharged by *Superfedeas* for want of Prosecution, shall be held to Bail in Debt on Judgment in the Cause wherein he was superseded, which is similar to the present Case. *Quatuor pedibus currit*, there if the Prisoner is discharged 'tis Plaintiff's own Fault, here the Bail in the Original Action was discharged by Plaintiff's own Fault. *Hewitt* for Defendant; *Davy* for Plaintiffs.

Horsley *against* Somers. Trin. 32 & 33 Geo. 2.

Motion by *Davy* to vacate Bail taken under an Affidavit made by Plaintiff, who had been convicted of Perjury on Statute 5 *Eliz.* Record of Conviction produced, the Rule to shew Cause was discharged, though Plaintiff cannot be a Witness, yet he must not be stripped of his legal Remedy to recover his just Debts.

Davies against Carter, Salk. 461. Kearney against Walker and Fuller, Robins against Jones, both in Banco Regis.

Phillimore and another Executors *against* Moore.

ON Bail-Bond, Rule to shew Cause why Proceedings should not be set aside with Costs, Defendant having surrendered himself to the Fleet Prison, in Discharge of his Bail before the Bail-Bond was put in Suit, objected by Plaintiff that the Surrender being after an Exception against the Bail, was irregular and void, for want of a previous Justification. The Objection was over-ruled, and the Rule made absolute without Costs. *Vide antea French against Knowles. Poole for Defendant; Davy for Plaintiff.*

Hay *against* Mann.

AN *Ac etiam* was put into the *Capias ad respondendum*, which was endorsed for Bail by Affidavit, and Defendant was arrested, and held to Bail thereon; but by Mistake in the *Præcipe* for the Writ left with the *Filazer*, no *Ac etiam* was inserted, for want of which a Common Appearance was ordered to be accepted. *Nares for Defendant; Davy for Plaintiff.*

How *against* Bridgewater, Gent. one of the Attornies, &c. Easter 33 Geo. 2.

Defendant being sued in this Court, by Bill in an Action of Debt on a Bail-Bond taken on an Arrest, by Virtue of a *King's Bench* Writ, obtained a Rule to shew Cause why the Proceedings here should not be stayed, insisting that the Bail-Bond could be regularly put in Suit only in that Court where the Original Action was brought, and so the Court held; Plaintiff's Counsel submitted that Defendant being an Attorney of this Court, and as such entitled to Privilege, could be sued in this Court only; but that is not so, Defendant by entering into a Bail-Bond has waived his Privilege, whether sued jointly or separately. *Davy for Defendant; Hewitt for Plaintiff.*

Composition.

Bland *against* Featherstone. Mich. 10 Geo. 2.

ACTION on the Statute of Usury. Defendant pleaded. Motion *per Draper* for Leave for the Prosecutor to compound on the Statute 18 *Eliz.* which Composition without Leave is penal. *Bootle* consented for Defendant; and a Rule was made pursuant to the Motion,

Costs and Bills of Costs.

Hurst *against* Dixon. Mich. 6 Geo. 2.

THE Question was, Whether a sixth Part of Mr. *Stavelky's* (Plaintiff's Attorney's) Bill of Costs not being taken off upon Taxation, he should not have his Costs of Taxation? The Bill amounted to 75*l.* 15*s.* 7*d.* and the Deductions were 7*l.* 3*s.* 10*d.* The Court ordered Plaintiff to pay *Stavelky's* Costs of Taxation.

Zouch *against* Bell. Hil. 6 Geo. 2. (Vide Rule Trin.
13 Geo. 2.)

A Rule *nisi* for Costs, for not proceeding to execute a Writ of Inquiry of Damages according to Notice, discharged as a Thing that never had been done,

Bangs,

Bangs, Executor, *against* Bangs.

ACTION brought by Plaintiff for Monies received by Defendant to the Use of Plaintiff, as Executor, and upon the Trial Plaintiff was nonsuited; and the Question was, Whether the Plaintiff, being an Executor, should pay Costs. *Per Cur'*: The Plaintiff shall pay Costs, because he might have brought the Action in his own Right. *Medley against York, Mich. 6 Ann. in B. R. in Point cited by Mr. Justice Denton.*

Lee, Executor, *against* Knight. Mich. 7 Geo. 2.,

AN Action brought upon a Bill of Fees for Business done by the Plaintiff's Testator. Defendant moved by *Glyde* to tax the Bill upon bringing the Money into Court. Denied *per Cur'* in the Case of an Executor.

Christmas, an Attorney, *against* Chase.

A Rule *nisi* was obtained to tax Plaintiff's Bill of Costs, and upon an Affidavit of Mr. *Benn*, who had been Plaintiff's Agent, that Plaintiff was dead, the Rule was discharged. *Birch* for *Benn*; *Hawkins* for Defendant.

Goodright *against* Holton. Hil. 7 Geo. 2.

In Ejectment. **C**OSTS in this Cause, taxed upon the Common Rule by Consent, were ordered to be paid by Defendant to the Representative of Lessor of Plaintiff, who died after the Trial. *Order of Master Grantham Day 21st. 7. 228. 297*

Arnold *against* Tompson. East. 7 Geo. 2.

THIS was an Action of Trespass for entering Plaintiff's Close, and driving and chasing his Sheep. The Question was, Whether

Whether after Judgment, the Damages being under 40 s. the Plaintiff should have full Costs. *'Per Cur'*: In case of an *Assortavit*, or if any Injury be done to a personal Chattel, the Plaintiff must have full Costs. *Wynne* for Plaintiff; *Chapple* for Defendant,

Britton against Dickerfon.

Demand of Costs to be paid must be at the same Time the Rule is served.

Carruthers against Lamb. Mich. 8 Geo. 2.

THIS was an Action of Trespas and Assault, and for tearing Plaintiff's Clothes. A general Verdict was found for Plaintiff, Damages under 40 s. and no Certificate; the Judges in the Treasury (Sir *George Cooke* doubting) were of Opinion that Plaintiff ought to have full Costs,

Allen and others against Maxey.

Defendant pleaded in Abatement. Plaintiff confessed the Plea to be true, and entered a *Nil capiat per Breve*. The Judges in the Treasury upon hearing the Attornies on both Sides, held that Plaintiff in this Case should not pay Costs. *Salk. 194. Garland against Extend, Mich. 2 Annæ. Thomas against Lloyd, 10 Gul. 3. in B. R.*

Hammond against Woolmer. Hil. 8 Geo. 2.

A Point of Law reserved at the Trial was heard and determined by the Court in Favour of Defendant, who afterwards died; and the Question was, Whether Plaintiff ought to pay Costs to Defendant's Executor by Virtue of the Rule by Consent, made at *Nisi prius*, and since a Rule of Court; and the Court, upon hearing Counsel on both Sides, were of Opinion, that as the Duty did arise in Defendant's Life-time, the Costs must be paid to his Executor. *Goodright against Halton, Hil. 7 Geo. 2.* was quoted. *Skinner* for Defendant's Executor; *Eyre* for Plaintiff.

Tomlinson

Tomlinson *against* White and Pomeroy. Easter 8
Geo. 2.

THIS was an Action of Trespass for breaking and entering Plaintiff's House, and breaking his Cellar-door. The Jury upon Trial found for Plaintiff, as to Breaking the Door, Damages 6*d.* Residue for Defendants. And the Question was, Whether Plaintiff should have full Costs, or no more Costs than Damages. The Court were of Opinion, that Plaintiff ought to have no more Costs than Damages. The Door was fixed to the House, and no personal Chattel. *Dixie against Somerfield, Hil. 6 G. 2. Ullisthorne against Kirkhouse, Easter 2 G. 2. Chapple for Defendants; Eyre for Plaintiff.*

Ray, an Attorney, *against* Jackson.

UPON a Motion in Arrest of Judgment the Court was of Opinion, that by the Statute of 6 *Geo. 2.* to explain the Statute of 4 *Geo. 2.* for putting all Proceedings, Pleadings, &c. into the *English* Tongue, Abbreviations in an Attorney's Bill, such as *so.* for *folio*, *Mr.* for *Master*, *pd.* for *paid*, &c. are helped after a Verdict. *Comyns* and *Wright* for Plaintiff; *Chapple* for Defendant.

Goodright *against* Tregurtha and another. Trin. 8 &
9 Geo. 2.

In Ejectment. **U**PON the Trial, one of the Defendants confessed Lease, Entry and Ouster, and a Verdict was found against him for one Third of the Tenements in Question: The other Defendant did not confess; and against him *Belfield* moved for Costs, which in this Case Plaintiff could not have upon the common Rule by Consent. The Court made a Rule to shew Cause, which was afterwards made absolute, no Cause being shewn.

Hayes *against* Thornton. Easter 9 Geo. 2.

A Rule being obtained by Defendant for Costs against Plaintiff, and the same not being paid before Defendant's Death, were demanded of Plaintiff by Virtue of a Letter of Attorney from *Thornton*, Defendant's Administratrix, which Matter appearing by Affidavit, and that the Letters of Administration and Power of Attorney were shewn to Plaintiff at the Time of the Demand, Court made a Rule for an Attachment against Plaintiff for Non-Payment of these Costs, upon *Belfield's* Motion.

Ashton, an Attorney, *against* Molineux. Trin. 10 Geo. 2.

A Rule was obtained for Plaintiff to shew Cause why his Bill of Costs for Business done in *Doncaster-Court, Yorkshire*, (for Recovery whereof this Action was brought) should not be referred to Prothonotary to be taxed: Upon shewing Cause it appeared that all the Business was done in *Doncaster-Court*, and the Bill had been taxed by the proper Officer there. The late Act of Parliament directs Bills to be taxed in that Court where the major Part of the Business charged is done; and therefore the Rule was discharged. *Agar* for Plaintiff; *Wynne* for Defendant.

Chapple and another, Executors of Gough an Attorney, *against* Chapman.

THE Plaintiffs had delivered a Bill of Law Business, done by their Testator. Defendant moved to tax it upon bringing the Money into Court; *sed negatur*; 'tis constantly denied here. *Prime* for Defendant; *Eyre* for Plaintiffs.

Jeffs *against* Slater. (Vide Rule Trin. 13 Geo. 2.)

AGAR moved for Costs for not proceeding to execute a Writ of Inquiry according to Notice; the Notice not being countermanded. Denied.

Harper, an Attorney, *against* Leech.

AGAR moved to stay Proceedings in this Action, which was brought for Recovery of a Bill of Costs before the Expiration of a Month after the Delivery thereof. *Hawkins* for Plaintiff urged, that this Matter may be pleaded, or taken Advantage of at the Trial, and therefore Proceedings ought not to be stayed on Motion. No Rule.

Bracher *against* Cotton. Hil. 10 Geo. 2.

AT *Nisi prius* a Juror was withdrawn by Consent, and Matters in Difference referred to Arbitrators, who awarded Costs to be taxed: And the Question was, Whether or no Prothonotary ought to allow Costs of the Reference. Held *per Cur'*, That these Costs ought not to be allowed. *Chapple* for Defendant; *Eyre* for Plaintiff,

Eyles, Bart. *against* Smart.

Plaintiff had moved for a Special Jury, according to the late Act of Parliament; and having obtained a Verdict, the Question was, with what Costs Defendant ought to be charged on that Account. Held *per Cur'*, That the Charge of striking the Special Jury must not be allowed; but all other Expences relating to the Special Jury, so far as reasonable, must be allowed. *Cannyns* and *Wright* for Plaintiff; *Wynne* for Defendant.

Jeynes qui tam, *against* Stephenson. Easter 10 Geo. 2.

THIS was an Action on Penal Statute 5 *Eliz.* against Defendant, for exercising the Trade of a *Glover*, not having served an Apprenticeship; and on the Trial the Jury found a Verdict for the Defendant. Costs were taxed on the *Posse*, and levied on Plaintiff by *Ca. Sa.* *Eyre* moved for Plaintiff to set aside the *Ca. Sa.* and for Restitution, urging, That as in this Action, if Plaintiff had recovered he would not have been intitled to Costs; so, though the Verdict be against him, he is not liable to pay Costs; and a Rule was made to shew Cause, which was discharged. Plaintiff is a common Informer, and not the Party grieved, and is liable to Costs *infra* Statute 18 *Eliz. cap. 5. sect. 3.* 1 *Ander.* 116. *Sav.* 50, 51. 1 *Salk.* 30. *Kirkham against Wheeler.* *Parker and Draper* for Defendant.

Ibbotson *against* Browne. Easter 11 Geo. 2.

THIS was an Action of Trespass, *Quare Clausum fregit.* Defendant pleaded a Justification. Plaintiff made a new Assignment, whereto Defendant pleaded Not guilty; and Plaintiff having recovered a Verdict with Damages under 40 s. and the Judge who tried the Cause not having certified as required *per Stat. 22 & 23 Car. 2.* the Question was, Whether Plaintiff ought to have full Costs or not? *Per Cur'*: Here is no Special Pleading; the new Assignment is only to ascertain the Place; Plaintiff can have no more Costs than Damages. *Boote* for Plaintiff; *Prime* for Defendant.

Clarke, an Attorney, *against* Taylor.

Defendant moved, that Plaintiff's Bill of Costs whereon this Action was brought might be taxed after Judgment by Default, and a Writ of Inquiry executed; but *per Cur'*, The Damages are now ascertained, Defendant applies too late, might have come any Time before. *Glyde* for Defendant; *Chapple* for Plaintiff.

Noble

Noble *against* Lancaſter.

THIS was an Action of Trover, whereto Defendant pleaded *Non aſſumpſit*; and Iſſue being joined, the Cauſe was tried, and a Verdict found for the Plaintiff; but the Iſſue being immaterial, the Judgment was arreſted, and a Repleader awarded; a Rule to replead was afterwards given by the Plaintiff, and for want of Defendant's repleading Judgment was ſigned by Default, and a Writ of Inquiry executed. The Queſtion was, Whether the Prothonotary, in taxing Coſts on ſigning the final Judgment, ſhould allow Plaintiff the Coſts of the immaterial Pleading and Trial, &c. *Et per Cur;* No Coſts were given at the Time of the Repleader granted, and there can be none now; both Parties have been in Fault, the immaterial Pleading is void, and neither Party can have Coſts for it. 2 *Ventr.* 196. *Walker* *againſt Brooke*, *Trin.* 8 *Gul.* 3. *Belfield* for Defendant; *Eyre* for Plaintiff.

Wickham *againſt* Walker. Mich. 11 Geo.

Defendant, an inferior Tradeſman, hunts in Company with a Perſon qualified, who kills a Hare, and Defendant being ſued on Statute—*Ann.* Plaintiff obtained a Verdict, and a Point reſerved, Whether Defendant was liable to Coſts, was argued. The Court was of Opinion, that Defendant being found by the Jury to be an inferior Tradeſman (a *Clothier* and Alehouſe-keeper) is within the Statute which was made to prevent ſuch People from miſpending their Time: Defendant's Trade is as much neglected when he hunts with a qualified Perſon, as without. *Per Holt:* Every Tradeſman not qualified, is an inferior Tradeſman, and tho' qualified, he cannot hunt in any Perſon's Ground but his own. Defendant muſt pay Coſts. *Eyre* for Plaintiff; *Agar* for Defendant.

Lazarus *againſt* Pritchard. Hil. 11 Geo. 2.

In Trover. **A** Rule to ſhew Cauſe why Proceedings ſhould not be ſtayed till after Payment of Coſts allowed Defendant in a former Action for the ſame Thing, was diſcharged as unprecedented:

unprecedented : The Court will not make such Rule in any Case, except Ejectment. *Skinner* for Plaintiff.

Boseville, Attorney, *against* ———. Trin. 11 & 12
Geo. 2.

PLaintiff's Bill of Costs was referred to Sir *George Cooke* upon Defendant's undertaking to pay; and after the Taxation Plaintiff proceeded to Judgment, which was set aside by the Court for want of Plaintiff's filing an Affidavit made use of before Sir *George*, to augment his Allowance of Costs, according to the late Rule of Court. *Hil. 11 Geo. 2.* ——— for Defendant; ——— for Plaintiff.

Shindler *against* Roberts. Easter 12 Geo. 2.

ON Penal Statute for acting as Commissioner of the Land-Tax, not being qualified : After Trial, and Case reserved, *Skinner* moved that Plaintiff's Attorney might deliver to Defendant an Account in Writing of Plaintiff's Place of Abode, &c. The Court thought the Motion came very late; but upon Defendant's Affidavit that he did not know what was the Cause of Action 'till *February* last, when he was served in the Country with Notice of the Declaration so late, that he could not apply last Term, a Rule was granted to shew Cause, and on hearing *Prime* for Plaintiff, who objected that this Motion ought to be before Plea, and that a Special Jury had been moved for by Defendant, Rule was made absolute. *Skinner* afterwards moved that Plaintiff might give Security for Costs in Case Judgment should go against him; but was denied: Plaintiff is a visible Person, and has a Right by Law to bring the Action.

Cowper *against* Milburn. Trin. 13 Geo. 2.

BIRCH for Defendant moved, That Mr. *Canning*, Defendant's late Attorney, might deliver a Bill of Costs, and that the same might be referred to the Prothonotary to be taxed. *Per Cur'*: These are distinct Motions: Let *Canning* shew Cause why he should not deliver Defendant a Bill; and that being done Defendant

dant may apply for a Taxation, which he cannot regularly do before a Bill delivered.

Horsfall *against* Greenwood and three others.

IN *Hilary* Vacation last Defendants pleaded four Special Pleas; and afterwards, the same Vacation, before Replications delivered, withdrew their Special Pleas, and pleaded the General Issue, insisting that by the Course of the Court they had a Right so to do, without Payment of Costs. *Bootle*, for Plaintiff, moved for Costs: *Draper* for Defendant, opposed the Motion. *Per Cur'*: No Rule can be made upon this Motion; the Practice is settled. Defendant may, by the Course of the Court, withdraw a Special Plea and plead the General Issue the same Term, before Replication delivered, without Costs. In this Case Plaintiff had advised with Counsel upon the Pleas, and Replications were prepared, but not delivered. *Robinson against Simonds*, Mich. 5. Geo. 2. *Martindale against Galloway*, Hil. 7 Geo. 2.

Creeke and another, Administrators, *against* Pitcairne, Clerk.

In Prohibition. **P**laintiffs were nonsuited at the Assizes upon an Issue of *Modus*, or no *Modus*: Defendant moved for Costs, and had a Rule to shew Cause, which Rule was discharged; the Demand for Tithes having accrued in the Life-time of the Intestate, and being a Demand for which Plaintiffs could not sue in their own Right. *Prime* for Defendant; *Bootle* for Plaintiff.

Horsfall *against* Greenwood and others. Mich. 13 Geo. 2.

Defendants having withdrawn Special Pleas, and pleaded General Issue the same Term, without Costs; *per curs' Cur'*, Plaintiff, after having obtained a Verdict, applied to the Court to have the Costs of the Special Pleas allowed upon the Taxation of Costs on the *Posse*; insisting, that though he could not have these Costs upon the Amendment, yet they ought to attend the Event of

of the Cause. The Court refused to order the Allowance of these Costs, no Precedent being shewn where such Costs had ever been allowed. *Bootle* for Plaintiff; *Agar* for Defendant.

Slaughter, by Mundy, his next Friend, *against* Talbot.

COSTS being allowed, and taxed to Defendant, were demanded of *Mundy*, Plaintiff's next Friend, who refused to pay; and Defendant moved for an Attachment *against Mundy* for Non-payment. Shew Cause. *Per Cur'*, the Rule absolute: By the uniform Practice of all the Courts the *Prochein Amie* is liable to Costs. *Ingefeld* *against Round*, *Hil.* 1726. *Skinner* for Defendant; *Eyre* for *Mundy*.

Dovor *against* Robinson. Easter 13 Geo. 2.

THIS was an Action for scandalous Words. Defendant justified,* and Plaintiff recovered a Verdict for Damages under 40*s.* Plaintiff procured full Costs to be taxed, and Defendant being taken in Execution, moved to be discharged, &c. The Court declared, that by the Statute Plaintiff can have no more Costs than Damages. Not guilty pleaded, or a Justification, makes no Difference (special Damage not being proved); and ordered the *Ca. Sa.* to be set aside, and Restitution and Costs, and by Consent no Action to be brought. *Agar* for Defendant; *Prime* for Plaintiff.

Ecollier *against* Dutour. Trin. 13 & 14 Geo. 2.

Johnson, Defendant's late Attorney, delivered Defendant a Bill of Costs amounting to 5*l.* 4*s.* 2*d.* and accepted 4*l.* 14*s.* 6*d.* in full Satisfaction; the Bill was afterwards taxed, and upon Taxation, 19*s.* were taken off, and 4*l.* 5*s.* 2*d.* allowed. Defendant obtained a Rule for *Johnson* to shew Cause why he should not pay the Costs of Taxation, insisting, that more than a sixth Part of his Bill had been disallowed. But the Court considered the Sum accepted by *Johnson* in full of his Bill, as his Demand, and the Sum of 9*s.* 4*d.* which appeared to be the Deduction there-
from

from not amounting to a sixth Part, the Rule was discharged, upon Repayment of 9s. 4d. overpaid. *Draper* for *Johnson*; *Umlin* for Defendant.

Downes, Administrator, *against* Shaft.

In Trever. **T**HE Conversion was laid to be in the Life-time of Plaintiff's Intestate; Defendant had a Verdict, and moved for Costs, which were denied. *Booth* for Defendant; *Wynne* for Plaintiff.

Ibbotson against Browne. Easter 11 Geo. 2.

THIS was an Action of Trespass *Quare Clausum fregit*; Defendant pleaded a Justification, Plaintiff made a new Assignment, whereto Defendant pleaded Not guilty; and Plaintiff having recovered a Verdict with Damages under 40s. and the Judge who tried the Cause not having certified as required *per* Statute 22 & 23 Car. 2. the Question was, Whether Plaintiff ought to have full Costs, or Not? *Per Cur'*: Here is no Special Pleading; the new Assignment is only to ascertain the Place. Plaintiff can have no more Costs than Damages. *Booth* for Plaintiff; *Prime* for Defendant.

Creake, Administratrix, and Creake, Administrator of
Creake, *against* Pircairne, Clerk, in Prohibition.
Trin. 13 & 14 Geo. 2.

A Writ of Prohibition having been granted in *Michaelmas* Term 1738, on the Plaintiffs Motion, and Plaintiffs not having proved their Suggestion to be true within six Months, pursuant to the Statute of 2 & 3 Edw. 6, Defendant moved in *Hilary* Term 1739, that a Writ of Consultation might be awarded for Defendant, Plaintiffs not proving their Suggestion to be true within the Time limited by the Statute; and that Plaintiffs might, according to the Direction of such Statute, pay to Defendant double Costs; and a Rule was granted to shew Cause. After several Motions it was now doubted, whether the Plaintiffs, being Administrators, ought to

pay Costs : But the Court seemed to think that Defendant was intitled of Course to a Writ of Consultation. *Sed Cur' advises* as to both Points.

Palmer *against* Williams, Clerk. Mich. 15 Geo. 2.

Defendant, after seven Years Litigation, obtained a Sentence in the Spiritual Court against Plaintiff for Petty Tithes of Gooseberries and Strawberries, of the Value of 7 *d.* three Farthings *per Ann.* Plaintiff applied for a Prohibition ; and for the Information of the Court, a feigned Issue was directed, to try whether the Plot of Ground where these Gooseberries, &c. grew, was Parcel of an ancient Orchard, or not. The Fact being found in Plaintiff's Favour, a Prohibition was granted ; and a Question arose, Whether Plaintiff should have any, and what Costs ? *Per Cur'* : Plaintiff must have his Costs of the feigned Issue. As to Costs of the Spiritual Court, (where Plaintiff has been unjustly vexed) they are not in our Power to give. Since the Statute giving Costs of Suit in Prohibition after Judgment, Costs commence from the Suggestion, which is taken to be the Commencement of the Suit, in lieu of an Original Writ of Prohibition. *Draper* for Plaintiff ; *Prime* and *Wynne* for Defendant.

Howard, Executor, *against* Radburn. Hil. 15 Geo. 2.

RULE was made absolute for Judgment of Nonsuit, pursuant to late Act of Parliament. But *per Cur'* : Plaintiff being an Executor, is not subject to Costs ; if a Nonsuit had happened at the Assizes, Plaintiff would not have been liable to Costs.

Goodtitle, on the Demise of Clewlow and his Wife, *against* Lowe and Lowe, in Ejectment ; Lowe *against* Lowe and another, in Case. Trin. 16 Geo. 2.

RULE obtained on the Motion of *Clewlow*, upon Affidavit of *Lowe's* Insolvency, to shew Cause why the Costs recovered

vered by *Clewlow*, in one of these Actions, should not be set off against the Costs recovered by *Lowe* in the other Action. *Wase*, Attorney for *Lowe*, shewed for Cause, that the Parties in the two Causes were different; and that by this Means *Clewlow*, who was in good Circumstances, would be discharged, and *Wase* would have no Remedy for his Costs, *Lowe* being insolvent. The Rule was discharged. *Skinner* for *Wase*; *Birch* for *Clewlow*. The Court denied to set Costs against Costs. *Ford* against *Miles*, *et c contra*, *Easter* Term 1739.

Honiwell against *Blatchford*. (Title *Nonpros*, &c.)

Defendant moved for Judgment, as in Case of Nonsuit, pursuant to the Statute, for want of Plaintiff's trying the Issue according to the Course of the Court, after a Treasury Rule obtained by Defendant against Plaintiff for Costs, for not proceeding to Trial according to Notice, and Costs taxed thereon. *Per Cur'*: Defendant shall not take both Remedies, but one only, at his Election; he hath made Choice of the one, and cannot now have the other. No Rule. *Belfield* for Defendant; *Gapper* for Plaintiff.

Thrustout, on the Demise of *Jenkinson*, against *Woodyear*, Esq; and his Wife, *Hoole*, *Allison* and *Hardwick*, in Ejectment. Hil. 16 Geo. 2.

UPON the Trial, Plaintiff obtained a Verdict against all the Defendants except *Hoole*, who was found Not guilty; Plaintiff's Costs were taxed upon the *Possea*, and also Defendant *Hoole's* (at three Pounds.) *Hoole* applied to the Court, and obtained a Rule to shew Cause why he should not be allowed a third Part of Defendant's common Costs, and all his extraordinary Costs: But upon shewing Cause, it appearing that the Allowance of Costs was just, and that the Motion was a mere Contrivance to charge Plaintiff's Lessor with extraordinary Costs, which were accrued on Account of all the Defendants, and not on the particular Account of *Hoole* only, though the main Question was determined in Plaintiff's Favour, and though *Hoole* was Tenant to Defendant *Woodyear*, and indemnified by him. The Rule was discharged with Costs.

for *Hoole*;

for Plaintiff.

Turner *against* Horton. Easter 16 Geo. 2.

THIS was an Action for several Sets of slanderous Words spoken by Defendant of Plaintiff in his Trade of a Baker, (*viz.*) *Turner* will break before *Christmas*; and I will lay a Wager of it; and such like; and laid Special Damage, *viz.* that *Charles Hedges* refused to deal with him upon Credit. Plaintiff obtained a Verdict, Damages Two-pence. And the Question was, Whether Plaintiff should have more Costs than Damages, under the Statute 21 *Jac. cap. 15. sect. 6*? *Per Cur'*: Plaintiff can have no more Costs than Damages; the true Distinction is, that where the Words are actionable in themselves, without the Special Damage, that is a Case within the Act of Parliament, and Plaintiff can have no more Costs than Damages. But where the Words are not actionable in themselves, but the Action is maintainable only with Respect to the Special Damage, then 'tis a Case at large, and out of the Statute; and Plaintiff, if he recovers any Damage, will be entitled to full Costs. Where the Words are actionable, (as in this Case) the Special Damages are to be considered merely by way of Aggravation, and no Notice ought to be taken of them in the Verdict, which must be generally, Guilty or Not guilty. The Verdict was for Plaintiff on the first and fourth Sets of Words only, but that makes no Alteration, the Words, in this Case, being all equally actionable, as spoken of Plaintiff in the Way of his Trade. Where the Words are not actionable, there the Special Damages are the Jet of the Action: and if the Jury find Defendant Guilty of speaking the Words, and acquit him as to the Special Damages, the Verdict ought to be so taken.

Grey, Administrator, *against* Lockwood, in Trover.
Trin. 16 & 17 Geo. 2.

THE Conversion being in the Time of the Administrator, the Action might have been maintained by Plaintiff in his own Right; and after Judgment for Defendant, the Court held that Plaintiff must pay Costs.

Broadbent *against* Wilks, in Trespas.

THOUGH the Trespas was confessed by the Plea, Plaintiff replied, and Issue being joined, on the Trial a Verdict was found for Defendant. Afterwards the Court gave Judgment for Plaintiff, notwithstanding the Verdict, and a Writ of Enquiry of Damages having been executed, the Question was, What Costs should be allowed Plaintiff on signing final Judgment? The Court directed the Prothonotary to allow Plaintiff all the Costs in the Cause, except the Costs of the Trial. *Prime* for Plaintiff; *Bootle* for Defendant.

Ogle, Executor, *against* Moffatt. Mich. 17 Geo. 2.

RULE for Plaintiff to pay Costs for not proceeding to Trial at last *Northumberland* Assizes, according to Notice, discharged. It appearing that the Cause was entered with the Marshal, that one material Witness was served with a *Subpœna*, and could not attend, and another was disabled by a Fall from his Horse. Plaintiff hath made no wilful Default; if he had, he must have paid Costs, though he sues as Executor. *Prime* for Plaintiff; *Bootle* for Defendant.

Holdfast, on the Demise of Hattersley, an Infant, *against* Jackson. Trinity 17 & 18 Geo. 2.

AFTER a former Ejectment brought in *Banco Regis*, a Case made, Argument thereon, and a Determination in favour of Defendant, and Defendant's Costs taxed, a new Ejectment was brought in this Court: Defendant obtained a Rule to shew Cause why Proceedings should not be stayed till after Payment of Costs in the former Ejectment, which was made absolute. The Courts of *Westminster-Hall* pay the same Regard one for another, and consider a former Ejectment in another Court as they do a former Ejectment in the same Court. *Salk. 255. Anonymous. Doe ex dem' Dukes of Hamilton against Hatherley, 14 Geo. 2. in B. R.* The same Practice in *Scaccario*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Milbourn against Reade. Trin. 17 & 18 Geo. 2.

DEclaration in Trespass, for assaulting, beating and wounding Plaintiff, at the Parish of (A.) and also for obstructing him in getting Coals, and for taking and carrying away Coals of Plaintiff, and spoiling other his Coals there, and for breaking and pulling down a Standard and Roller of Plaintiff's, and taking and carrying away other Goods and Chattels of Plaintiff's there. Plea Not guilty. On Trial Defendant found Guilty of all the Premises, except taking and carrying away the Goods and Chattels; Damages 5s. Costs 5s. and as to taking and carrying away said Goods and Chattels, Not Guilty. No Certificate by the Judge that the Assault and Battery was sufficiently proved, or that the Freehold or Title of Land came chiefly in Question, *secundum Stat' 22 & 23 Car. 2. cap. 9. sect. 136.* and for Want thereof, after Prothonotary had taxed Plaintiff full Costs, Defendant obtained a Rule to shew Cause why said Taxation should not be set aside; which Rule, after hearing Counsel on both Sides, was discharged by the Court.

Held, agreeably to the uniform Determinations of the Courts at *Westminster*, almost ever since said *Stat' 22 & 23 Car. 2.* That no Action is comprehended within that Statute but of Trespass *Quare clausum fregit* and of Assault and Battery; in all other personal Actions, a Plaintiff who recovers Damages, though under 40s. (except Actions for scandalous Words, which are governed by a particular Law) is intitled to full Costs by the Statute of *Gloucester*, without the Aid of a Certificate under said *Stat' Car. 2.* unless deprived of that Benefit by a Certificate according to the Statute *43 Eliz. cap. 6. sect. 2.* Lord Chief Justice *Willes* paid no Regard to the Spoliation or Asportation of Chattels; he quoted *Venn* against *Phillips*, *Salk. 208*, *Thompson* against *Berry*, *C. B. Pasch. 7. Geo. 2.* Mr. Justice *Abney* was of the same Opinion. Mr. Justice *Burnett* differed in that Respect; he apprehended one Part of this Verdict (the Assault and Battery) to be within, and the other Part (the Trespass as to the Spoliation of personal Chattels) to be out of said *Stat. Car. 2.* but as Plaintiff might have brought separate Actions, and possibly have recovered full Costs in each for the Assault and Battery, with a Certificate, and for the Spoliation of Chattels, without a Certificate, he is, by joining both together, less vexatious to Defendant. Plaintiff is intitled to Costs in this Action, as he would have

have been in a separate Action for the Spoliation or Asportation of Chattels only. In this Case, as the Trespass is laid generally at the Parish of (A.) and not in any particular Close of Plaintiff, the Title of Land could not come in Question. *Lately against Fry, Comyns Rep.* 19, 20. Action for breaking Plaintiff's Close, and cutting and carrying away his Corn there, Defendant found Guilty of breaking the Close, and cutting the Corn, but as to the carrying away Not guilty; Damages under 40 s. no Certificate. The Court refused to give full Costs for Want of a Certificate, because the Trespass found was within the Statute; but after several Debates, the Court inclined to be of Opinion to have given full Costs, if besides breaking the Close and cutting the Corn, Defendant had also been found Guilty of carrying away the Corn, which would have made that Case parallel to the present; for then the Jury would have found one Trespass within the Statute, and another Trespass out of the Statute. *Wynne* for Defendant; *Draper* and *Bootle* for Plaintiff.

Mitchell, Widow, *against* Younghusband. Mich. 18
Geo. 2.

ACTION for Words (Special Damage laid, by which Plaintiff lost her Marriage.) General Verdict for Plaintiff, Damages Two Pence. Rule absolute, that Plaintiff should have full Costs, the Words themselves not being actionable, but only as they are coupled with the Special Damage. *Bootle* for Plaintiff; *Prime* for Defendant.

Waite *against* Smales, *ex parte Exec' Def.* Hil. 18
Geo. 2.

WRIT of Enquiry by Consent, directed to be executed before a Judge at the Assizes, not entered with the Marshal. After the other Business done, there was Time to execute this Writ; Plaintiff had given Notice of executing it on a particular Day, during the Assizes at York; Defendant's Executors applied for Costs, which were denied. Plaintiff is not in fault. This Case is not with the Rule concerning Records of *Nisi prius*. The Judge herein is no more than an Assistant to the Sheriff, to whom the Writ is directed.

directed. The Notice ought to have been general ; Notice for a particular Day is void. *Skinner and Beale* for the Executors.

Harper against Sherrard. Hilary 20 Geo. 2.

DEfendant having pleaded his Discharge under the insolvent Debtors Act, and having obtained Judgment, was intitled to treble Costs under the Statute ; the Question was, From what Time such Costs ought to be computed ? A Rule by Consent was entered into, that the Defendant should have treble Costs from the Time of his Plea. *Draper* for Defendant ; *Beale* for Plaintiff.

Greenhow against Illey and others. Easter 21 Geo. 2.

THE Plaintiff declared, that he was possessed of and in an ancient Messuage and divers Acres of Land *cum pertin'*, in *Sandhurst Com' Berks*, and by Reason thereof he had, and of Right ought to have, Common of Pasture for all his commonable Cattle *levant and couchant* upon his said Messuage and Lands, in a certain Common or Waste called *Sandhurst Common*, every Year at all Times of the Year, except upon and from the 10th of *June* until and upon the 10th of *July* ; but Defendants, to hinder and deprive him of his said Common of Pasture, cut and dug Turf, (*viz.*) 100 Cart Loads of Turves in twenty Acres of the Soil of that Common, and took and carried away the Turves there cut and dug, whereby the Plaintiff could not have and enjoy his Common of Pasture in so large, ample and beneficial Manner as he ought to have done, but lost the greatest Part thereof. He also declared in like Manner with Respect to Common of Turbary.

Defendants Pleas. The Defendants, by Leave of the Court, plead three Pleas, *viz.* first, Not guilty ; secondly, as to the first Count, that *Adam Williamson*, Esq; is seised of the Manor of *Sandhurst*, in his Demesne as of Fee, and that Defendants, as his Servants, and by his Command, cut and dug the Turves in the first Count mentioned, then growing and being in the *Locus in quo*, as being in the several Soil and Freehold of the said *Adam Williamson*, and took and carried away the same for the Use of the said *Adam Williamson* ; thirdly, the like Plea as to the second Count.

New

New Assignment. As to the second Plea, the Plaintiff, by a new Assignment, says, that he ought not to be barred from having his Action, because that the 100 Cart Loads of Turves mentioned in the first Count, were 100 Cart Loads of Turves cut and dug for Sale, and sold, taken and carried away, and were other 100 Cart Loads of Turves than the 100 Cart Loads mentioned in the Plea to be cut, dug, taken and carried away for the Use of the said *Adam Williamson*; and concludes with an Averment; and inasmuch as the Defendants have not answered the cutting, digging and carrying away the Turves newly assigned, the Plaintiff prays Judgment, and his Damages; and replies in like Manner to the third Plea.

Plea to the new Assignment. As to the Trespasses, &c. as to the Turves first and secondly anew assigned to be cut and dug for Sale, and sold, taken and carried away, the Defendants say, that the said *Adam Williamson* long before the Time when, &c. was, and still is, seised in his Demesne as of Fee of and in the Manor of *Sandhurst*, and being so seised before the Time when, &c. viz. on the 27th October 1735, he gave and granted to one *Thomas Solmes*, in his Life-time, Licence and Liberty to cut and dig Turf and Peat for Sale, from and off the said Place called *Sandhurst Common*, in which, &c. and to take and carry away the same, and to sell and dispose thereof, for his own Use and Benefit, at his own Will and Pleasure, to hold the said Licence and Liberty from *Michaelmas* then last past for 99 Years, in Case the said *Thomas Solmes* should so long live; by Virtue of which Licence and Liberty the Defendants, after the granting of the said Licence, and during the Life of the said *Thomas*, viz. on the 1st May 1743, and at divers other Days and Times between that Day and the 24th of *November* in the same Year, on which Day the said *Thomas* died, (except within and during the Times above excepted) as Servants of the said *Thomas Solmes*, and by his Command, entered into the said Places, in which, &c. in order to cut and dig Turves there, for the Purpose aforesaid, and then and there cut and dug the said Turves first anew assigned, and also the Turves secondly anew assigned, and took and carried away, and delivered the same to and for the Use and Benefit of the said *Thomas Solmes*, as it was lawful for them to do; which said Turves were afterwards sold by the said *Thomas Solmes*, by Virtue of his Grant and Licence aforesaid; which are the same Trespasses, &c. above anew assigned; and concludes with an Averment.

Demurrer. To this the Plaintiff demurs,

Joinder

Joinder in Demurrer. And the Defendants join in Demurrer.

On the Demurrer the Plaintiff had Judgment, but on the Trial of the Issue joined upon the Not guilty, the Plaintiff was nonsuited.

Prothonotary *Cooke* having a Doubt as to the Taxation of Costs for the Plaintiff on the Demurrer, in *Easter Term 21 Geo. 2.* Plaintiff moved the Court, and obtained a Rule for the Defendants to shew Cause why Costs of the two Pleas pleaded by the Defendants, which on a Demurrer joined were judged insufficient, should not be given for the Plaintiff; and the Taxation of the Defendants Costs of the Nonsuit was ordered to be stayed till the Court should otherwise order.

After hearing Counsel on both Sides, and after a Consultation with all the Judges, (amongst whom was some Division in Opinion) the Court in *Hilary Term 22 Geo. 2.* ordered, that it be referred to the Prothonotary to tax the Plaintiff's Costs of the Demurrer joined between the Parties, according to the Act of Parliament made in the fourth Year of the Reign of her late Majesty Queen *Anne*, intituled, *An Act for the Amendment of the Law, and the better Advancement of Justice*; and that so much as shall be thereon allowed, be deducted out of the Sum that shall be allowed the Defendants for their Costs in this Action. *Prime and Belfield* for Plaintiff; *Skinner* for the Defendants.

Fyson against Cooke and others, in Replevin. Mich. 22 Geo. 2.

Defendants having obtained an Order to amend their Avowry on Payment of Costs; *Noyes*, Defendants Agent, after Plaintiff's Death, which he knew not of, paid 5*l.* 11*s.* 6*d.* Costs, taxed on the Amendment, to *Lloyd*, Plaintiff's Agent. The Judges in the Treasury ordered the Money to be repaid.

Malton, who as well, &c. against Aclam and others, in Prohibition.

AFTER a Verdict for Defendant as to Part, the Question was, Whether he should be allowed Costs, pursuant to Stat. *Will.*

Will. 3. or not? In *Quare Impedit*, if Defendant has Judgment, a Writ is awarded to the Bishop; in *Replevin*, a Writ of *Return' Habeas*; and Costs are given to the Avowant in some Cases by *Stat.* 21 *Hen.* 8. in Prohibition by 4 *Jac.* 1. a Consultation is given, and since the Statute *W.* 3. Costs, &c. if Verdict, &c. pass against Plaintiff. Rule that Judgment be entered for a Consultation as to Part, and for Costs. The *Postea* was agreed to be altered, with Respect to finding that Plaintiff proceeded in the Spiritual Court after the Writ of Prohibition delivered to him, which is material. *Battle* for Defendant; *Agar* for Plaintiff.

Poole *against* Boulton and others, in Trover. Hil. 22
Geo. 2.

ON the Trial, Plaintiff obtained a Verdict against one of the Defendants, but the two others were acquitted. *Prime* moved on Behalf of the two Defendants found Not guilty, for Costs. Denied. This is an Action of Trespass on the Case, and not within the Statute 8 & 9 *W.* 3. giving Costs to Defendants acquitted in Trespass, &c.

Lomax, Esquire, *against* The Bishop of London, Crespin, Clerk, and Cooke, Esquire, in Quare Impedit. Same Term.

THE Bishop's Plea was, No Claim but as Ordinary; Judgment passed against Defendant *Cooke* for Non-appearance on a *Distingas*. An Issue between Plaintiff and Defendant *Crespin* on the Right of Presentation, was tried, and a Verdict found for Plaintiff. Afterwards a Writ of Enquiry was awarded as to Matters (omitted at the Trial) *viz.* first, Whether the Vicarage was full? secondly, If full, at whose Presentation; and how much Time is elapsed since it last began to be vacant? and thirdly, The true Value of the Vicarage by the Year? By the Inquisition it was returned, That the Vicarage was full of the Defendant *Daniel Crespin*, on the Presentation of the King; that it began to be vacant 26th June 1746, on the Death of *John Romney*, Clerk; Value by the Year 120 *l.* *Draper* for Plaintiff moved for Costs, Damages being given by the Statute of *Westminster* 2. and by the

the Statute of Gloucester, Costs in all Cases where Damages. He quoted *Holl* against *Holland*, 3 *Lev.* 35, and *Skinner* 25. Rule was made to shew Cause, which was afterwards discharged. The Statute of Gloucester, 6 *Ed.* 1. relates to Cases at Common Law and Statutes antecedent. The subsequent Statute of Westminster 2. 13 *Ed.* 1. creates Damages in *Quare Impedit*, where there were none before at Common Law, (doth not add to Damages that were recoverable before) gives two Years Value, where the Turn is lost by Laches, if not, and Living full, Half a Year's Value, *Mich.* 10 *James* 1. *Pinfold's Case*, 10 *Coke*, where Damages are created, (none before) no Costs; where the Damages are additional, Costs. 1 *Jones*, Sir Thomas, 234. *Kelway* 26. *a.* *Skinner* is mistaken, he refers to two Cases in *Coke* which don't warrant him. In *Quare Impedit* the King has no Damages, because he is not within the Statute of Westminster. *Hob.* 23. If Writ of Error, Costs *per Stat. Hen.* 7. no Costs in any other Instance. *Skinner* for Defendant *Crespin*.

Jones against Davies and his Wife, in Trespass and Assault. Easter 22 Geo. 2.

Defendants had pleaded to two Assaults, &c. laid in the Declaration, several Matters, by Leave of the Court, viz. an Accord with Satisfaction by the Husband; That what the Wife did was in Aid of her Husband; Not guilty; and *Son Assault demesne*. On Trial the Verdict was on the two first-mentioned Pleas for the Defendants, Residue for Plaintiff, without any Damages; no Certificate from the Judge, that Defendants had probable Cause to plead the two last-mentioned Pleas. The Court thought they had no discretionary Power, but are bound by the Statute 4th *Qu. Anne*, as the Judge has not certified. Rule absolute, that Plaintiff have Costs occasioned by the two later Pleas, and that the same be deducted out of Costs allowed Defendants. *Skinner* for Plaintiff; *Belfield* for Defendants.

Moorhouse against Barham. Hilary 23 Geo. 2.

Defendant had obtained a Treasury Rule for Taxation of Plaintiff's Attorney's Bill, at Peril of Costs. On Plaintiff's Application to the Court to discharge the Treasury Rule,

the Court ordered the Bill to be taxed as between Attorney and Client, at Peril of Costs. *Poole* for Plaintiff; *Boyle* for Defendant.

Cremer against Dent. Easter 24 Geo. 2.

FOUR Issues were joined on four several Pleas in Bar to an Avowry, three of which were found for the Plaintiff, and the fourth for the Defendant. The Judge before whom the Issues were tried not having certified, under the Statute 4 Queen Anne, That Plaintiff had probable Cause to plead the fourth Plea in Bar; Defendant moved for Costs as to the fourth Plea, and obtained a Rule to shew Cause. The Judge, after the Motion, and before Cause shewn, certified in Plaintiff's Favour; whereupon the Rule was discharged, and Plaintiff ordered to pay Defendant Costs of the Application.

N. B. The Certificate is not required by the Statute to be made in Court at the Trial. *Prime* for Plaintiff; *Poole* for Defendant.

Yates against Gun and his Wife. Mich. 25 Geo. 2.

AFTER Issue and Demurrer joined, Plaintiff proceeded to try the Issue, and recovered a Verdict; afterwards the Demurrer was argued, and the Court gave Judgment thereupon for Defendant. Plaintiff moved for Costs of the Trial. The Court ordered the Prothonotary to tax Costs on both Sides, and that Plaintiff's Costs of the Trial be deducted out of Defendant's Costs, if Defendant's Costs exceed Plaintiff's; if Plaintiff's Costs exceed Defendant's, Defendant to pay Plaintiff's Exceedings. *Poole* for Plaintiff; *Boyle* for Defendant.

Bligh and another, Executors, against Cope. Mich.
25 Geo. 2.

Defendant pleaded to Plaintiff's Action his Discharge as a Fugitive, under the insolvent Debtors Act 16th George 2. Plaintiffs not content with Judgment and Execution as to future Effects, to have Execution against Defendant's Person, replied and

and took Issue, that Defendant was not a Fugitive beyond the Seas within the Statute; and on Trial a Verdict was found for Defendant; whereupon *Prime*, for Defendant, moved for Treble Costs, pursuant to said Statute; which Statute doth not in Words extend to Executors; the Discharge was obtained in 1743, subsequent to Testator's Death; and Plaintiffs the Executors were summoned, and had an Opportunity of controverting the Fact at the Sessions. The Serjeant insisted, That though this Action could not have been supported by Plaintiffs in their own Right, without suing in the Capacity of Executors, yet as they have made themselves Principals, by putting in Issue a Fact which happened since the Testator's Death, they have made themselves liable, and ought to pay the Treble Costs. A Rule was made to shew Cause; which was afterwards discharged, on hearing *Willes* and *Agar* for the Plaintiffs. The Court held, that the Rule, as to Fugitives and insolvent Debtors, must be the same; that if the Executors are liable to any, they are liable to Treble Costs; but the uniform Construction of Law has constantly been, that where an Executor can bring the Action in his own Right, and yet brings it *quatenus* Executor, there, if he fails, he shall pay Costs; but if he could not bring the Action otherwise than *quatenus* Executor, though he fails, he shall pay no Costs. Executors have been excused from Costs, because they are obliged to get in the Testator's Effects, and cannot be supposed to be quite cognisant of his Rights; they act *in autre Droit*; the Cause of Action arose in Testator's Life-time; this Act is not distinguishable from Constructions of former Statutes; an Executor is not considered as a Plaintiff, but as a Representative. There has been a like Determination in the Court of King's Bench, where the Defendant applied for Double Costs on the *Mint Act*. *Hitchcox*, Executor, against *Gale*, *Mich.* 13 *George* 2.

Tiffin against Glasf. Hil. 25 *Geo.* 2.

THIS was an Action for slanderous Words; seven Sets were put into the Declaration; the first Set as follows, He (Plaintiff) has done such Things as I (Defendant) could hang him for, if the Truth was known; the following Sets were of like Import. 'Twas laid, that Plaintiff was a Blacksmith by Trade, and that *Philip Parker Senior* and *Philip Parker Junior*,
two

two of his Customers, by Reason of publishing the Words, had discontinued to deal with him as before. Verdict was found for Plaintiff, as to the first Set of Words, Damages 1 s.; as to four other Sets, Defendant was found Not guilty; but as to the remaining two Sets, and the Special Damage, no Finding of the Jury appeared. The Question was, Whether Plaintiff should have Costs *de incremento*, or no more Costs than Damages?

Per Curiam: In *Turner against Horton*, Easter 16 Geo. 2. all the Cases relative to this Point were taken into Consideration. Where Words are of themselves actionable, the Special Damage makes no Alteration, except by way of Aggravation; where Words are not in themselves actionable, the Special Damage is the Jet of the Action. Anciently, perhaps, when Words were taken in *mitiori sensu*, these Words might not be thought actionable; but in later Times it has been otherwise adjudged, for Preservation of the Peace; and because Words are to be legally understood as the By-standers, and all the World understand them. These Words seem rather to be actionable than otherwise. The Court cannot presume that the consequential Damage was found. Though no Motion has been made in Arrest of Judgment, yet had it been plain that the Words were not actionable; the Court ought not to give Judgment; but where 'tis not plain, and the Court incline to think the Words actionable, Judgment ought not to be stayed. Where, on Trial, Words plainly appear not to be actionable, and no Special Damage interferes, Plaintiff ought to be nonsuited, that Defendant may have Costs, which in Arrest of Judgment he cannot have. The Court will not refine on a good Statute 21 Jac. c. 16. against its obvious Intent. Rule to shew Cause why Plaintiff should not be allowed Costs *de incremento* discharged. *Prime* for Plaintiff; *Agar* for Defendant.

Barrowclough *against* Webster and Smith, in Assault and Battery. Easter 25 Geo. 2.

BOTH Defendants plead Not guilty; and Defendant *Webster*, by Leave of the Court, pleads also *Son Assault demesne*. Verdict for Plaintiff against both Defendants on the Not guilty, and for Defendant *Webster* on the *Son Assault*; Damages as to *Smith* 9 s. Two Certificates were signed on the Record of *Nisi prius* by the Lord Chief Baron, who tried the Cause; one, that the Assault and Battery

Battery was sufficiently proved; the other, that there was a probable Cause for making *Webster* a Defendant. *Webster* moved for Costs on Stat. 4 *Ann.* which doth not extend to this Case; nor Stat. 9 *Will.* 3. as held by the Court. Costs denied. *Prime* for *Webster*.

**Bright *against* Jackson and others, in Replevin. Trin.
25 & 26 Geo. 2.**

Plaintiff had pleaded, by Leave of the Court, two several Matters in Bar to the Avowry, by way of Prescription for Right of Common, &c. And on one of the Pleas the Fact was found for him; but there being no Certificate from the Judge who tried the Cause, that Plaintiff had probable Cause to plead the other Plea, Defendants moved for Costs occasioned thereby, pursuant to Stat. 4 *Qu. Anne.* The Question was, Whether these Proceedings are within that Statute or not? The Avowant in Replevin is omitted in the Words of the Statute. Rule to shew Cause why Plaintiff should not pay Costs, enlarged. *Prime* for Defendant; *Poole* for Plaintiff.

Gregory *against* Dormer. Mich. 26 Geo. 2.

THIS was an Action for several Trespasses, (*inter al'*) a Trespass in *Stock Orchard* and *Rye Close*, with Cattle, and bruising, pressing and spoiling Plaintiff's Apples, (*viz.*) twenty Bushels of Apples there found. The Cause had been tried in *Gloucestershire* by a Special Jury of Gentlemen, who found for Plaintiff as to the particular Trespass aforesaid; Residue for Defendant. The Question was, Whether Plaintiff should be allowed full Costs, or not? Court discharged Plaintiff's Rule to shew Cause why he should not have full Costs. The Apples, for ought that appears by the Declaration, might be growing, though not laid to be *ibidem crescen'*, but *ibidem invent'*. The Jury had the Merit of the Cause before them; the Action appears to be frivolous, by the small Damages they gave. *Willes* and *Poole* for Defendant; *Draper* and *Hayward* for Plaintiff.

Scoffin against Robinson, in Trespass. Easter 26.
Geo. 2.

Plaintiff, at last Assizes for *Kent*, recovered a Verdict against Defendant; and at the same Assizes, in an Ejectment, on the Demise of *Robinson* (Defendant in this Action) against *Scoffin* (Plaintiff in this Action) Plaintiff recovered a Verdict. *Robinson* applied to have the Costs he was intitled to, set off and deducted out of the Costs to be allowed *Scoffin*. Rule for that Purpose made absolute. *Willes* for Defendant; *Poole* for Plaintiff.

Mordecai against Nutting and others, in Trespass, &c.

[Omitted in Mich. 23 Geo. 2.]

Plaintiff sues four Defendants, gets a Verdict against one, and the other three are acquitted. On an Affidavit that Plaintiff is an itinerant *Jew* and poor, Defendants who were acquitted obtained a Rule to shew Cause, why their Costs should not be deducted out of what Prothonotary should allow Plaintiff for Costs against that Defendant who was found guilty. On shewing Cause the Court declared the Motion to be unprecedented, and discharged the Rule. *Prime* for Plaintiff; *Leeds* for Defendants.

Owston against O Bryan. Trin. 27 & 28 Geo. 2.

Defendant paid Money (about 37 *l.*) into Court on the common Rule; Plaintiff proceeded to Trial, and recovered a larger Sum, and afterwards became a Bankrupt; the Assignees of Plaintiff's Effects under the Commission, moved to have the Money paid out of Court to them; which was opposed by Mr. *Ward* Plaintiff's Attorney, who submitted Whether he who had been the Instrument of recovering the Verdict, ought not to be first paid his Bill of Costs? Rule to refer *Ward's* Bill to the Prothonotary to be taxed, *Ward* to allow 7 *l.* 4 *s.* received by him of Plaintiff in Part, and then to be paid out of the Money in

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Court,

Court, Residue to be paid the Assignees. *Prime* for *Ward*; *Poole* for the Assignees.

Roberts against Biggs and others.

RULE made absolute, That Proceedings on final Judgment signed in this Cause be stayed, and that 17 *l.* 11 *s.* Damages and Costs thereby recovered be allowed to Defendant *Biggs*, towards Payment of the larger Sum of Money recovered in an Action brought by him [*Biggs*] against *Roberts*, wherein Defendant [*Roberts*] having been arrested by one *Richard Bellamy*, *John Bradley* Junior, and *George Smithurst* (as *Bellamy's* Assistants) for 41 *l.* 2 *s.* 0 *d.* upon Promise, was rescued by his Wife and one *George Platts* his Brother in Law, and thereby made his Escape to his own House; Plaintiff and the Officers pursued but could not retake him, Defendant absconding, Plaintiff sued out Process of Outlawry, Defendant appeared to the Exigent, and the Cause being at Issue was tried at *Nottingham* Spring Assizes 1754, wherein Plaintiff recovered for Damages and Costs 70 *l.* 10 *s.* 0 *d.* *Roberts* brought this Action against *Biggs*, *Bellamy* and *Bradley*, in Trespass, for that they (together with *Smithurst*) broke and entered his House, and disturbed him and his Family inhabiting therein; which Cause being at Issue was also tried at said Spring Assizes, and the Jury gave Plaintiff 1 *s.* Damages. Mr. Justice *Birch*, who tried the Cause, certifying, that the Trespass was wilful and malicious, Plaintiff *Roberts* became entitled to his Costs, which Damages and Costs amounted to 17 *l.* 11 *s.* 0 *d.* *Willes* for Defendants; *Prime* and *Poole* for *Roberts*.

Bright against Jackson, in Replevin. Hil. 28 Geo. 2.

THE Avowant applied, under the Stat. 4 *Q. Anne*, for the Amendment of the Law, for Costs; some of the Issues joined on several Pleas in Bar to the Avowry pleaded by Leave of the Court being found for him, and no Certificate by the Judge that such Pleas were material, the Word [*Avowant*] happens to be omitted in the Stat. though the Words [*Defendant, Tenant, and Plaintiff,*] are inserted; an Avowant is in the Nature of a Defendant, and plainly within the Meaning and Intent of the Statute. Rule absolute, that Prothonotary shall tax Avowant's

Costs on the Plea found for him, and that the same be deducted out of Costs allowed Plaintiff. *Prime* for Avowant; *Willes* and *Poole* for Plaintiff.

East *against* Nonelly, in Replevin. The same Case, Goodright on Demise of Larmer *against* Searle, in Ejectment.

UPON Affidavit of Death of the Lessor of Plaintiff, a Rule was made, That Plaintiff's Attorney should shew Cause why Proceedings should not be stayed till some Person gives Security for Defendant's Costs, if any shall be adjudged to him. The Court, upon hearing Counsel on both Sides, thought Security ought to be given, and thereupon Mr. *Limbrey* Plaintiff's Attorney undertaking for Payment of such Costs, the Rule was discharged. *Hewitt* for Defendant; *Poole* for Plaintiff's Attorney.

Barker Esquire, and Cooke Esquire, *against* the Bishop of London, Lomax Esquire, and Bellamy Clerk. In quare impedit.

A Bill of Costs delivered by Mr. *Cooling* as Attorney for Defendant *Bellamy*, amounting to 165 *l.* 15 *s.* having, at the Instance of Defendant *Bellamy*, been referred to Mr. Prothonotary *Wegg* to be taxed, and less than a sixth Part, *viz.* 25 *l.* 13 *s.* 10 *d.* having been deducted on Taxation, *Cooling* had moved for Costs of the Taxation, and the Rule for those Costs was drawn up absolutely. Defendant *Bellamy* applied to discharge that Rule; and upon hearing Counsel on both Sides, the Court discharged the former Rule, as unprecedented; it should have been drawn up to shew Cause, not absolutely; but a new Rule was made, Ordering Defendant *Bellamy* to pay *Cooling* Costs of the Taxation. By *Stat. 2 Geo. 2.* if a sixth Part of an Attorney's Bill be deducted, the Court are not left to their Discretion, but are obliged to award Costs of the Taxation against the Attorney; where a sixth Part is not deducted, the Court are left to their Discretion. The Statute is a good Guide, what it directs in one Case seems to be a right Rule in the other; ever since the Statute, Costs of Taxation have

been reciprocally given to the Party charged, and to the Attorney, as a sixth Part has, or has not, been taken off. *Prime* for Defendant *Bellamy*; *Draper* for *Cooling*.

Lloyd Esquire, *against* Winton, in Replevin. Mich.
29 Geo. 2.

Plaintiff declared for taking and detaining an Ox; Defendant avowed the Taking as a Seizure for a Heriot Custom, (claiming no Right to distrain.) After a Nonsuit Mr. Prothonotary *Cooke* had allowed Defendant double Costs, taking the Case to be within the *Stat. 11 Geo. 2.* giving Avowants double Costs; Plaintiff moved that the Prothonotary might review his Taxation. Rule for that Purpose made absolute. The Avowry not being for taking the Ox as a Distress is out of the Statute; for Heriot Service, Cattle, &c. are distrainable, for Heriot Custom not. *Pools* for Plaintiff; *Wilfon* for Defendant.

Seed *against* Wolfenden, in Prohibition. Hil. 29
Geo. 2.

IT was at Defendant's Instance made Part of the Rule, whereby a Writ of Prohibition was granted, That Plaintiff should declare in Prohibition; Defendant afterwards demanded a Declaration, and threatened a *Non Pros* for want thereof; whereupon Plaintiff's Agent prepared a Declaration; when 'twas ready he was told by Defendant's Agent that he need not deliver it; but as he had been at the Trouble and Expence of preparing a Declaration, Plaintiff's Agent delivered the same to Defendant's Agent, and called for a Plea: Defendant pleaded nothing to the Merits, but only that he did not proceed in the Spiritual Court after the Prohibition, gave a Rule to reply, and demanded a Replication; whereupon Plaintiff applied to the Court, and obtained a Rule for Defendant to shew Cause why he should not pay Plaintiff's Costs of the Proceedings in Prohibition; which Rule was now made absolute. The Court looked upon the Plea to be a sham nugatory Plea, not being to the Merits of the Cause; the Allegation that Defendant has proceeded contrary to the Prohibition, is and must be put into every Declaration of this Kind,
but

but whether he has so proceeded or no, is totally immaterial. The *Stat. 8 & 9 Will. 3. Ch. 10. Sect. 3.* gives Costs after Plea or Demurrer, but this is not a Plea within the Statute. *Prime* for Plaintiff; *Poole* for Defendant.

Lloyd *against* Day. Trin. 32 & 33 Geo. 2.

TWO Counts in declaration for different Trespasses in different Places, Defendant pleaded several Justifications, and on Trial all the Issues were found for Defendant, except an Issue on Not guilty to the Novel Assignment which was found for Plaintiff, Damages 1*d.* Costs 1*d.* On Plaintiff's Application for the *Poslea* it was ordered to be delivered to him, and he was ordered to bring it into Court; after *Poslea* brought in, Defendant obtained a Rule to shew Cause why Prothonotary should not Tax his Costs on the Issues found for him. Upon hearing Counsel on both Sides, the Court held that Defendant was not entitled to Costs, and that Plaintiff could have no more Costs than Damages. The Plea of Not guilty's being to the Novel Assignment makes no Difference. *Nares* and *Davy* for the Defendant; *Hewitt* for the Plaintiff.

Thrustout on the Demise of Wilson, D. D. *against* Foot, Widow and others, in Ejectment. Easter 33

Geo. 2. *B. 2 P. 335 - 125: 297 - Amended Return 21th 7*

A Verdict at the Assizes was found for Plaintiff *against* Defendant, Foot, Widow, who on the Trial appeared, and confessed Lease, Entry and Ouster, the other Defendants did not appear, and confess, thereupon they according to the usual Practice in such Case were found Not guilty. Plaintiff obtained Leave of the Court to take out Execution, *i. e.* a Writ of *Habere facias Possessionem* on the Judgment *against* the Casual Ejector as to them, and got his Costs taxed on the *Poslea*, for which Costs he thereby could only have Remedy *against* Defendant, Foot, Widow. He then moved, that Prothonotary should Tax his Costs *against* Defendant, Goodere Foot, Clerk, (one of the Defendants who did not appear and confess) on the common Rule by Consent entered into for him, whereon a Rule was first made to shew Cause, and now absolute. *Nares* for Plaintiff; *Hewitt* for Defendant Goodere Foot.

Wright on the Demise of Burrell and others against
Pelham, Esquire, in Ejectment. Easter 30 Geo. 2.

AT *Lincolnshire* Assizes, — this Cause was made a *Remanet* by Consent, at Summer Assizes 1756 'twas tried, and Plaintiff obtained a Verdict, Plaintiff moved that Prothonotary in his Taxation might allow the Costs of the former Assizes, when the Cause was made a *Remanet* upon Affidavit of five Persons, that 'twas then agreed these Costs should attend the Event of the Trial; a *King's Bench* Case was quoted, *Standen* on the Demise of *Wheatley* and others against *Hall*, in Ejectment, wherein that Court lately confirmed the Master's Allowance of the Costs of a *Remanet*, and 'twas said that in *Quo Warranto* Causes this is always done. On Defendant's Part the Agreement as to the Costs of the former Assizes attending the Event of a future Trial, was denied by several Persons present, Plaintiff himself had drawn up the Order of Assizes then made, wherein no such Clause was inserted, and made it a Rule of this Court. The Practice here is not to allow the Costs of a former Assizes when the Cause is made a *Remanet*, unless by Consent of Parties expressed in a Rule or Order, entered into for that Purpose. Rule to shew Cause as prayed on the first Motion discharged, *Poole* and *Forster* for Plaintiff; *Prime* and *Hewitt* for Defendant,

Trinity 31 Geo. 2.

IN Action of Debt on Statute *Edw. 6.* for not setting forth Tythes in which Treble the Value is recovered, Costs are given where the single Value found by the Jury, doth not exceed twenty Nobles, per Statute 8 & 9 *Will. 3. Ch. 10, Sec. 3.*

In the Spiritual Court double the Value is recoverable with Costs.

In Courts of *Westminster*, Treble the Value with Costs, if the single Value exceeds not twenty Nobles; without Costs, if the single Value exceeds twenty Nobles.

N. B. This was found to be so upon looking into the Practice by the three Prothonotaries; but did not come before the Court.

Whitham

Whitham *against* Hill and others. Easter 32 Geo. 2.

ACTION on the Statute of 1 Geo. 2. Ch. 5. against Riots, Declaration sets forth, Whereas divers Persons to the Number of Twelve and more, did unlawfully, riotously, &c. assemble, &c. and being so, &c. did with Force, &c. demolish a certain Dwelling-House of the said Plaintiff contrary to the Form, &c. States Defendants Inhabitants of the Hundred. Damages laid 300*l.* Judgment by Default. Inquiry Damages 90*l.* Motion for Costs.

Mr. Serjeant *Hewitt*. No Costs before Statute *Gloucester*, 13 *Edw.* 1. this to hold Place in all Cases where Damages are to be recovered, though given after the Statute 2 *Inst.* 228-9. 10 *Co.* *Pinfold's* Case seems to contradict this Doctrine, because 'tis there said, that where a Statute gives Damages where none were before, Party shall not have Costs; but the 8 Geo. 2. mentions Costs where it directs how the Money is to be distributed. Where there are double Damages there the Party hath no Costs. There is a Distinction taken between a Statute of Creation and of Addition; but no Foundation for it, the Statute of Hue and Cry gives no Costs; but directs the Recovery of the Money; there the Party shall have Costs. 'Tis true 'tis not so in *Quare imp.* There is a Distinction between Penal Statutes and others. In the Writ of *Notanter*, 2 *Saunders* 374-8, *Boyd against Hundred of Exminster*, *Trin.* 2 Geo. 2. Judgment, *Trin. Roll.* 1051, Damages, Costs, and increased Costs. Mr. Serjeant *Poole e Contra.* *Willes* Chief Justice: It is very plain, Plaintiff intitled to Costs. 1. By Statute *Gloucester*. 2. On Word Damages. 3. Reason of Thing, and Meaning of Act. 4. Similitude of Statute Hue and Cry.

1. The Words——whenever Plaintiff recovers Damages, he shall likewise have Costs of the Writ purchased, this is whether on precedent or subsequent Statute. When Lord *Co.* commented no Case had happened; but he takes it for granted.

2. So by Word Damages, and such a Construction is put on the Statute of Hue and Cry, and so the Statute 8 Geo. 2. C. 16.

3. If not it was only a partial Remedy, Entries are *pro Missis, & Custag'*, and then comes *quæ quidem Dam.* which takes in both. The first Statute of Hue and Cry mentions only Damages. There are two Cases. Case in *Saunders* seems an Authority in Point, and

the Case in *B. R. Pendred* against *Hundred of Oswestry*. All the Cases of Double and Treble Damages out of the Case. So then in the Case of Penalties (*Lutwiche*) *Sedgwick qui tam*, &c. against *Richardson* 'tis said where Penalty certain, there shall be Damages that not Law. *Pinfold's* Case very extraordinary after what is said in a *Inst.* As to Action on subsequent Statute, that makes no Difference, *Wilson* against *Rawson*, *Trin.* 21 *Geo.* 2. *B. R.*

Clive Justice : This a new Question never determined, the last Case quoted never mentioned before to the Court. Costs *de Incremento* since Statute of *Gloucester*. Now as to the Words of the Writ purchased, it hath been held that extends to full Costs, then the Words are in every Case where Damages are given ; but that is too general, because 'tis certain that though Damages are given on Waste no Costs *de Incremento*, so in *quare imp.* therefore I think what is said by Lord *Co.* in *Pinfold's* Case is right as to Statutes creative of Damages or not, no Difference whether Double or Single. But I think this Statute not a creative Act, for pulling down an House, an Action for Damages would lie at Common Law. This Action only changes the Person liable ; therefore according to all the Cases Plaintiff intitled to Costs, and 'tis plain this the same as Statute of Hue and Cry. Therefore I think Plaintiff intitled to Costs.

Bathurst Justice : The Statute on which this Action brought refers to Statute of Hue and Cry. 'Tis said all the Judgments as to Hue and Cry passed, *sub Silentio*, I think that could hardly be ; but whenever it was settled it must have been by Motion as this is, therefore it never would appear on Record. If the Statute of Hue and Cry had been *Res integra*, I should have some Doubt ; but think I could distinguish ; but possibly the Party might have had an Action against the *Hundred* for not keeping Watch and Ward ; but however the Statute of Hue and Cry says, the Party shall recover the Money he was robbed of, and Damages ; now Damages there must mean Costs. I am very unwilling to shake the Doctrine laid down by Lord *Coke*.

Nyel Justice : I shall determine on the Statute on which the Action brought, referring to the Statute of Hue and Cry, and Costs have always been given on that Statute. The Statute of the 8 *Geo.* 2. hath recognized the Law as to Costs.

Willes Chief Justice : The Party to have his Costs,

Stoddard against Launder and others. Trin. 33 Geo. 2.

THIS Cause which had been formerly put off at the Assizes for Want of a View, after a View had, was carried down to Trial again at last Summer Assizes, and was then left untried by the Judge, and made a *Remanet* for Want of Time. At last Assizes the Cause was tried, and Plaintiff who obtained a Verdict moved the Court, that the Prothonotary on Taxation of Costs on the Verdict should allow Plaintiff Costs of the former Assizes, when the Cause was made a *Remanet*. Plaintiff's Counsel quoted a Case in the *King's Bench*, *Easter* 22 Geo. 2. *Standley* on the Demise of *Wheatley* against *Hall*, in which the Master reported, "That where a Cause is made a *Remanet*, and neither Party to blame, the Costs of the former Assizes are allowed after a Verdict for the Plaintiff or Defendant at the subsequent Assizes." Rule to shew Cause granted, which Rule was afterwards discharged, the three Prothonotaries all reporting the Practice of this Court to be otherwise, *Per Cur*: A particular Inconvenience must submit to the standing Practice; but it may be proper to confer with the Judges of the other Courts, in Order to bring about a Uniformity. *Nares* for Plaintiff; *Hewitt* for Defendant,

Damages.

Burton against Baynes. Mich. 7 Geo. 2.

THIS was an Action for an Assault, Battery, and Mayhem, which was tried at the last Assizes for the County of *Lincoln*, and Plaintiff obtained a Verdict for 11*l.* 14*s.* Damages. Plaintiff, who by the Assault had almost lost the Sight of one of his Eyes, thought the Damages too small, and moved the Court that they might be increased upon View of the Party; and a Rule was made to shew Cause; and upon View of the Party, and the Examination of *John Moor*, a Surgeon, *ore tenus* in open Court, and hearing Counsel

set on both Sides, the Damages were increased by the Court from 11*l.* 14*s.* to 50*l.*

Southey against Day and others. Hil. 7 Geo. 2.

THIS was an Action of Trespas for cutting down and carrying away twenty Trees of Plaintiff's. As to twelve of the Trees Defendants justified for Estovers; and as to the remaining eight pleaded Not guilty, and two separate Issues were joined thereupon. At the Trial the Merits were fully determined as to the Issue joined upon the Justification for Estovers; but Plaintiff gave no Evidence upon the Not guilty, and no Notice being taken thereof, the Jury found a Verdict for Plaintiff generally, and gave 5*s.* Damages, but omitted to acquit Defendants on the Not guilty; whereupon Defendants moved to set aside the Verdict, and obtained a Rule to shew Cause, which was afterwards discharged on hearing Counsel on both Sides. The Verdict appearing to be just, and the Damages moderate, the Court would not overturn the Verdict; but left Plaintiff to enter up his Judgment as he should be advised. *Baynes* for Defendants; *Chapple* for Plaintiff.

Donelly against Baker, in Assault and Battery. Mich. 18 Geo. 2.

BOOTLE, for Plaintiff, moved to set aside Inquisition taken on Writ of Enquiry, for Smallness of Damages; the Jury found 8*l.* only, though Defendant's Cure by a Surgeon was proved to be worth Eighteen Guineas, and though no Witness was produced by Defendant to controvert the Fact. The Court refused to make any Rule.

Demurrer and other Special Arguments.

Brown against Kidney. East. 8 Geo. 2.

A Feoffment passes, or at least extinguishes all collateral Rights, and a Right to a Way is extinguished by it. Held *per Cur.* on Demurrer.

Hunt against Puckmore. East. 10 Geo. 2.

Plaintiff declared against Defendant as Heir, in Debt, on the Ancestor's Bond. Defendant pleaded *Riens per Descend.* Plaintiff replied Assets. Defendant demurred to the Replication, and Plaintiff joined in Demurrer, and the Cause was set down to be argued. *Hawkins* for Defendant moved for Leave to withdraw the Demurrer, and rejoin issuably on Payment of Costs, and obtained a Rule to shew Cause. Plaintiff on shewing Cause insisted, that by the Demurrer he had been delayed an Affizes, and Defendant now came too late to withdraw his Demurrer, unless he would give Judgment for Plaintiff's Security. *Hawkins* urged a Diffidence of his own Opinion as to the Validity of the Pleadings, and was fearful to venture the Argument, because, if Judgment had passed against his Client on Demurrer, the Debt must be paid out of Defendant's own Goods; if on Verdict out of Assets. The Court made the Rule absolute. Mr. Justice *Denton* contra. *Wright* for Plaintiff.

Corderoy against Reynoldson. Mich. 11 Geo. 2.

IN Causes in the Paper on Points reserved, Plaintiff's Counsel is to begin the Argument. *Hawkins* for Plaintiff; *Draper* for Defendant.

Langton *against* Tuckwell. Mich. 12 Geo. 2.

GIRDLER moved to set aside the Rule for a *Consilium*, no Joinder in Demurrer having been delivered under Counsel's Hand. On shewing Cause it appeared that Defendant's Attorney had accepted and paid for the Paper Book wherein Plaintiff had joined in Demurrer so long ago as *June* last, and that the Joinder was at that Time actually signed by Counsel. No Objection was made till the Day before the Time appointed this Term for Argument. *Skinner* for Plaintiff. Rule discharged with Costs.

Pearson *against* Roberts and Groom, in Replevin.
Easter 28 Geo. 2.

THIS was an Action of Replevin brought by Plaintiff against Defendants for their taking a Gelding of Plaintiff's, and detaining him against Gages, &c.

Whereto Defendants pleaded the general Issue; and the Cause came on to be tried before Mr. Justice *Denison* at Lent Assizes for the County of *Bedford*, *March* 17, 1754.

Upon the Trial the Case appeared to be, that Defendants were Surveyors of the Highways in and for the Parish of *Eaton Bray* in the County of *Bedford* in the Year 1753.

That Plaintiff was in that Year an Inhabitant of same Parish; and following the Trade or Employment of a Miller and Badger, occupied a Water Corn Mill and some Lands within said Parish, of the yearly Value of 22*l.* at and under that Rent only.

That Plaintiff in that Year kept and used in said Parish two Carts, two Waggons, and ten Horses, in his Business of a Miller and Badger, and in carrying of Goods for Hire, and in Husbandry.

That six Days were duly appointed, and due Notice thereof given for the Parishioners of said Parish to come into the Highways, and do their Duty therein respectively, pursuant to the Provisions of the several Statutes in that Behalf made.

That pursuant to such Appointment and Notice, Plaintiff duly attended in the Highways with one Wain or Cart, furnished after
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the Custom of the Country, (*viz.*) with three Horses and two Men, on every of said six Days.

But Defendants insisting that Plaintiff ought to have done Duty with two Wains or Carts, furnished after the Custom of the Country, (*viz.*) with three Horses and two Men each, made Complaint to two of his Majesty's Justices of the Peace in and for said County of *Bedford* against Plaintiff; For that he had attended in said Highways with one Wain or Cart furnished after the Custom of the Country, (*viz.*) with three Horses and two Men only. And upon that Complaint, Plaintiff attending to answer for himself thereunto, said Justices did adjudge Plaintiff to have been guilty of a Neglect of Duty in the Premises, and for his said Offence to have forfeited the Sum of 3 *l.* Sterling (*i. e.*) the Sum of ten Shillings for every of said six Days, so as aforesaid appointed and notified.

And for levying of said Penalty of 3 *l.* said Justices issued their Warrant in Writing under their Hands and Seals, directed to Defendants, requiring them forthwith to levy said Sum of 3 *l.* by Distress and Sale of the Goods and Chattels of Plaintiff.

Pursuant to which Warrant Defendants took and impounded, as a Distress, said Gelding of Plaintiff's, in order to sell same for the Purpose in said Warrant mentioned; upon which Plaintiff levied his Plaint in Replevin (wherein said Action was to be determined) without having first demanded in Writing the Perusal or Copy of said Warrant. The Questions for the Considerations of the Court were,

First, Whether Plaintiff was by Law compellable to go with or send into the Highways, in *Eaton Bray* aforesaid, in said Year 1753, more than one Wain or Cart on every of said six Days abovementioned?

And if not,

Secondly, Whether Plaintiff, before the Commencement of this Action, ought not to have demanded in Writing a Copy or Perusal of said Warrant of said Justices?

If the Court should be of Opinion, that Plaintiff was not compellable to go with or send into the Highways aforesaid, more than one Wain or Cart, on any of said six Days abovementioned; and that it was not necessary for Plaintiff to have demanded in Writing a Copy or Perusal of said Warrant; then Plaintiff was to have the *Posse* delivered to him, &c. otherwise said *Posse* was to be delivered to the Defendant, &c.

The

The Court gave Judgment on the first Point for Plaintiff, being of Opinion that Plaintiff was not compellable to send into the Highways more than one Wain or Cart. He that has a Plough-Land (which by *Stat. 7 & 8 Will. 3. Ch. 29. Sect. 57.* is explained to be *50 l. per Ann.*) is not obliged to send more than one; Plaintiff farmed *22 l. per Ann.* only. A Case in *3 Keble 567.* had been cited by Defendant's Counsel between the King and the Inhabitants of *Fulham, Mich. 27 Car. 2.* and a Copy of the Proceedings were produced, to shew that the Court of *King's Bench* had determined in that Case, That every Person ought to send as many Wains or Carrs into the Highways, as he keeps Teams; but upon looking into the Proceedings no such Determination appeared to have been made. A Case cited by Defendant's Counsel from Mr. Justice *Raymond's Reports 186.* was thought obscure, and to be no Authority. *Vide Statutes relating to the Highways. 2 & 3 Phil. & Mary Ch. 8. 5 Eliz. Ch. 13. 22 Cha. 2. Ch. 12. 7 & 8 Will. 3. Ch. 29.*

But on the second Point the Court gave Judgment for the Defendants, being of Opinion that Replevin is an Action within the *Stat. 24 Geo. 2.* And that before the Commencement of that Action against the present Defendants the Officers, Plaintiff ought to have demanded in Writing a Copy or Perusal of the Warrant; for want of which Demand his Action cannot be supported.

Plaintiff's Counsel observed, That if Replevin is deemed to be an Action within said *Stat. 24 Geo. 2.* which, where the Action is intended to be brought against the Justices of the Peace, requires a Month's previous Notice, great Inconvenience must arise; because the Cattle distrained would probably be starved and die before they could be replevied. To this the Court answered, That perhaps a mandatory Writ to the Sheriff, or a Plaint in Replevin in his Court, may not be looked upon as an Action within the said Statute; but the Suit in this Court in Replevin for Damages, is an Action within said Statute. Replevin is called an Action in *Stat. 9 Hen. 8.* and a Suit in *Stat. 17 Cha. 2.*

The *Possea* was ordered to be delivered to Defendants.

Gardiner against Jessop, Gent. one, &c. Hil. 30
Geo. 2.

Defendant being an Attorney of this Court, was sued as such by Bill in this Action for a Debt under 40 s.

Defendant

Defendant pleaded under the County Court of *Middlesex* A&C, that the Action being for a Debt under 40 s. and Plaintiff and Defendant both resident within the Jurisdiction of the said County Court, the Action ought to have been brought there; to this Plea Plaintiff demurred, and defendant joined in Demurrer; upon Argument the Demurrer was over-ruled, and Judgment given for Plaintiff, the Court being of Opinion that Defendant was properly sued here in respect of Privilege, though for a Debt under 40 s. had he been sued in the County Court, he might there have pleaded his Privilege as an Attorney of this Court. *Davy* for Plaintiff; *Hayward* for Defendant.

Norden, Assignee, &c. against Horsley. Easter 30 Geo. 2.

ACTION of Debt on Bail-Bond in the Penalty of 24 l. 18 s. which was more than double the Sum of 12 l. sworn due, for which by Indorsement on the Writ, Bail was to be taken, Defendant pleaded that the Bond was void, *per Statute 12 Geo.* to prevent frivolous and vexatious Arrests. To this Plea Plaintiff demurred, and Defendant joined in Demurrer. After Argument the Court gave Judgment for the Plaintiff, holding the Bail-Bond not to be made void by the Statute. The making of the Penalty exactly double the Sum sworn due may be a good Rule. The A&C is directory to the Sheriff, and in some Respects prohibitory, if Defendant is oppressed he may complain. If the Penalty exceeding double the Sum sworn due, should make a Bail-Bond void, Plaintiffs may often be tricked by Collusion between Defendants and the Sheriff's Officers. *Martin* for Plaintiff; *Davy* for Defendant.

Mackey against Sutherland, Administrator, &c. Hil.
31 Geo. 2.

HELD upon Argument of Demurrer, that the calling Defendant Administrator in the Declaration is a sufficient Averment of his being so, without setting out, that Administration was committed to him, as in 2d Lord *Raymond*, 1510, *Holliday against Fletcher*, in *Banco Regis*. There is no Difference between the two Courts; the Recital of the Original Writ, (wherein Defendant is called Administrator) is a Part of the Declaration which might

might have been denied on this Writ, the Plaintiff counts against the said Defendant the Administrator, and alleges that the Intestate in his Life-time did not pay the Debt, nor the said Defendant the Administrator since his Death. Judgment given for the Plaintiff. *Poole* for the Plaintiff; *Davy* for Defendant.

Hatchett, Gent. one, &c. against Hughes.

DEclaration for Fees, and Business done in the Courts of *Westminster*, and great Sessions in *Wales*.

Plea that Plaintiff was not admitted, and inrolled an Attorney of the Court of great Sessions in *Wales*.

Replication and Demurrer to it.

On Argument the Plea was held to be bad, it amounts only to the general Issue, the Replication therefore was out of the Case, Plaintiff *per* Statute being an Attorney of this Court, might carry on the Proceedings in another Court, in the Name of an Attorney of that Court. Judgment for the Plaintiff; *Prime* for Plaintiff; *Wilson* for Defendant.

Dickinson, Assignee, &c. against Foord. Trin. 32 & 33 Geo. 2.

AT *Ni. Pri.* a Point was reserved, and a Case made for the Opinion of the Court, whereby it was stated, That — (against whom a Commission of Bankrupt had issued, and under which an Assignment of his Effects had been made to Plaintiff) having been arrested, and the Sheriff's Officer having taken his word to put in Bail kept at home, and declared he did so to avoid the Consequences of the former Arrest. The Question was whether this was an Act of Bankruptcy or not. The Court thought this to be a Plain Act of Bankruptcy. The Intent to defraud his Creditors would not have been sufficient to make this Man a Bankrupt without doing the Act, *i. e.* keeping at Home; but he kept House, and declared with what Intent; the Intent need not be put in Execution, the Question is *Quo animo* he kept house, he himself did the overt Act, and declared his Intent. *Davy* for Plaintiff; *Nares* for Defendant.

Sandford *against* Rogers, Esq. Hil. 33 Geo. 2.

IN Case on Promise for Goods sold and delivered, Defendant pleaded a Judgment recovered by Plaintiff, *against* Defendant for the same Cause of Action in the Court of *King's Bench*, and this he is ready to verify by the Record. Plaintiff replied *Nul tiel Record*, concluding with a general Averment thus, *viz.* And this he is ready to verify, &c. To this Replication Defendant demurred specially, assigning for Cause, that a general Averment was bad, and that the Replication should have concluded with giving Defendant a Day to bring in the Record. Plaintiff joined in Demurrer upon Argument. *Poole* for Defendant insisted, that as an Affirmative and Negative were contained in the Plea and Replication, the Issue was then complete, and a Rejoinder unnecessary, *vide antea*.

Newberry *against* Strudwick. Easter 9 Geo. 2.

HEwitt for Plaintiff shewed several Precedents of Rejoinders where the Record pleaded is the Record of another Court, (not of the same Court where the Action is brought) in which Case a Rejoinder is the sure Way to introduce an Affirmative on the Defendant's Part, and was the Practice in *B. R. tempore Holt* Chief Justice: The Court held either Way to be good, with or without a Rejoinder. Judgment for the Plaintiff.

Dowding, Administrator, &c. *against* Baker & al.
Trin. 13 & 14 Geo. 2.

THIS was an Action of Debt upon a Bond; Declaration delivered of *Trinity* Term last past, with an Imparance 'till *Michaelmas* Term; Defendant procured a Judge's Order for Time to plead 'till the 15th *December*, and then pleaded *Solvit ad diem* by one of the Defendants. In *Hilary* Term Plaintiff replied, Nonpayment; and Defendant the same Term rejoined, entered a Waiver of his Plea, and set out Letters Testimonial dated 26th *November*, whereby it appeared, that Plaintiff was excommunicated on 23d *November*, and so pleads the Excommunication *puis darrein continuance*

in *Easter* Term following. Plaintiff demurs, and Defendant joins in Demurrer. *Bootle* for Defendant alledged, that Plaintiff in making up the Demurrer Book, had continued the Imparance 'till the last Return of *Michaelmas* Term, which is 25th *November*, though the Plea was delivered generally of that Term, and the Imparance ought to be carried no farther than *Tres Mich.* By the Plaintiff's continuing it beyond 23d *November*, an Absurdity was created, and the Excommunication appeared to be before, and not after the last Continuance. *Draper* for Plaintiff insisted, that it is Plaintiff's Right to enter Continuances by Imparance, from the Declaration to Judgment or Issue. That Time to plead and an Imparance are the same Thing, and as Defendant in Truth had Time to plead till the 15th *December*, the Imparance ought to be continued according to the Fact; and of that Opinion were the Court, and ordered the Imparance to stand continued till *Quinden' Martini*.

Shields and another, *against* Cuthbertson. Mich. 15
Geo. 2.

DEclaration for Goods sold and delivered; Defendant pleads in Abatement, and traverses the Inhabitaney; Plaintiff demurs, and on Argument made two Objections: 1st, That the Statute of Additions expresses the Word *Conversant*; that *Rastall*, and all the old Entries, are so; indeed some modern Entries are *Commorant*, but none *Inhabitant*; and 2dly, That the Plea begins, that Defendant comes and defends the Wrong and Injury when, &c. and after a full Defence, Defendant cannot plead in Abatement. The second Objection was over-ruled; but the first held good. A Man may lodge in one Parish, and work in another; he is *conversant* where he works. Judgment for Plaintiff that Defendant answer over. *Bootle* for Plaintiff; *Skinner* for Defendant.

Littlehales, an Attorney, *against* Bosanquett, by Attachment of Privilege. Easter 15 Geo. 2.

Defendant demurred to the Declaration, and assigned for Cause the Want of Pledges. Plaintiff joined in Demurrer, and Defendant moved to withdraw his Demurrer on Payment of Costs,

to pay 10*l.* into Court upon the common Rule, and plead the General Issue; which was ordered, Plaintiff not opposing the same.

Note; It hath been determined, that Pledges need not be put into the Declaration. Pledges are upon the Writ, and may be found any Time before Judgment. *Manfield un' Cleric'* against *Richman*, on Demurrer, and Want of Pledges shewn for Cause, *Easter 2 Geo. 2.* *Durrant, one, &c.* against *Lynes, Trin. 10 & 11 Geo. 2.* *Booth* for Defendant; *Skinner* for Plaintiff.

Sharpe against Sharpe. Mich. 16 Geo. 2.

AFTER Joinder in Demurrer, Plaintiff 27th *October* moved for a *Confilium*, and afterwards delivered the Paper-Book the same Day, which was held to be irregular, and the Cause ordered to be struck out of the Paper. The regular Practice is to tender the Paper-Book to Defendant's Attorney; if he refuses to accept and pay for it, Judgment may be signed for want thereof; if he accepts and pays for it, then Plaintiff is proper to move for a *Confilium*, and proceed to Argument. *Skinner* for Defendant; *Agar* for Plaintiff.

Wilson, an Attorney, against Finch, an Attorney. Hilary 17 Geo. 2.

Plaintiff declared on a Promissory Note; Defendant pleaded *Non Assumpsit infra sex annos*. Plaintiff replied, an Attachment of Privilege, bearing Teste five Terms before the Term of which the Declaration was delivered. Defendant demurred to the Replication, and Plaintiff joined in Demurrer. Upon the Argument, it was objected to the Replication, That no Return of the Attachment of Privilege, General or Special, appears; nor doth it appear that the Writ was delivered to the Sheriff, or returned; and that the Lapse of five Terms was bad. The Court held, That an Appearance cures all Errors and Defects in Process; and that the Words in the Declaration (*was attached by Writ of Privilege*) refer to the Return of that Writ, whenever it was; and gave Judgment for Plaintiff. *Draper* for Plaintiff; *Booth* for Defendant.

Trinity 17 & 18 Geo. 2.

PER Cur : For the Future, in all Demurrer-Books delivered to the Judges, let the Counsels Names be inserted who signed the Pleadings; and let the Number-Roll and Day of Argument be set down on the Outside of each Book.

Gott *against* Vavasor and others, Heir and Devisees,
in Debt on Bond. Hilary 18 Geo. 2.

THE ACTION was brought on the Statute 3 & 4 *Will. & Mary*, *ch. 14 sect. 3 & 4.* and on Demurrer the Court gave Judgment for Defendants; it appearing by the Pleadings that the Testator's Estate was devised to Trustees for the Payment of Debts, and consequently this was a Case out of the Statute.

Stone *against* Rawlinson and another. Hilary 18
Geo. 2.

ACTION brought on Promisory Note, payable to *A. B.* or Order, and indorsed to Plaintiff by the Administrator of *A. B.* Demurrer to the Declaration, and two Causes assigned: First, That Plaintiff declared without a *Profert in Cur* of the Letters of Administration of *A. B.* and secondly, That it did not appear by whom the same was granted. A third Objection was taken at the Bar, *viz.* That an Executor or Administrator cannot assign a Promisory Note, so as to give an Indorsee an Action in his own Name. The first and second Objections were over-ruled; because the Letters of Administration cannot be supposed to be in the Custody or Power of Plaintiff, but of the Administrator himself; and on Trial it would be incumbent on Plaintiff to shew the Person who indorsed the Note to him to be the proper Administrator of *A. B.*

The third Objection over-ruled, because it has been the constant Practice among Merchants, for Executors and Administrators to indorse both Promisory Notes and Bills of Exchange; and the Court will endeavour to adapt the Rules of Law to the Course of Trade; and is warranted in this Opinion by the Words of the
Statute

Statute 3 & 4 Ann. c. 9. *sect.* 1. which says, that Promissory Notes are to be indorsed in like Manner as Bills of Exchange. The Equitable Interest is converted into a legal Interest, and the whole Interest is vested in the Administrator, who, before the Statute, might assign his Equitable, and since his Legal Interest. *Moor* against *Manning*, Mich. 5 Geo. in C. B. held, That whoever has the absolute Property, may assign a Note payable to Order. Judgment for Plaintiff. *Prime* for Plaintiff; *Birch* for Defendant.

Brumwell against *Garnett*, one &c. Trin. 18 & 19 Geo. 2.

RULE for a *Consilium*, made 24th May, in last *Easter* Term, though the Paper-Book was not then delivered, nor afterwards till the 20th of June instant, held irregular, and the Rule for a *Consilium* discharged this Day, viz. Wednesday 26th June 1745: But on Motion of Plaintiff's Counsel the same Day, the Court made a new Rule for a *Consilium*, and gave Leave to set down the Cause for Friday next; dispensing with the Shortness of the Time for the Delivery of Books to the Judges. *Turner* against *Horton*, Trin. 10 & 11 Geo. 2. *Sharpe* against *Sharpe*, Mich. 16 Geo. 2. quoted. *Willes* for Defendant; *Draper* for Plaintiff.

Burgess against *Halding*. Trinity 19 & 20 Geo. 2.

ON the Argument of a Point reserved at *Nisi prius*, the Court held, That in the Case of a Tender, the *Placita* is of no Validity. An Original must be produced. Judgment ordered to be entered for Defendant. *Willes* for Plaintiff; *Bootle* for Defendant.

Savile against *Wiltshire* and another, Executors. Mich. 20 Geo. 2.

THIS ACTION was Debt on a Judgment obtained against the Testator, suggesting the Judgment to have been recovered *Essex*, and the Venue was laid in *Essex*. Objected, That the Venue must be in *Middlesex*, and no where else. Answered, The original

Action wherein Judgment was recovered being laid in *Effex*; this Action may either be in *Effex* or in *Middlesex*, where the Record of the Judgment is; and cited *Hall against Wingfield*, *Hob.* 95. where a Recognizance was taken at *Serjeants-Inn, London*, and recorded in *Middlesex*, the *Scire facias* may be either in *London* or *Middlesex*. *Per Cur*^a: This Action is not founded partly in *Effex* and partly in *Middlesex*, being intirely on the Judgment. The original Action is at an End, *Transit in Rem judicatam*. The Court must take judicial Notice where the Common Pleas sit, though not laid in the Declaration to be in *Middlesex*. Mr. Justice *Birch* quoted *Musgrave against Wharton*, *Yelv.* 218. and *Cro. Jac.* 241. *Comyns's Reports* 305. Declaration held bad on Demurrer, and Judgment for Defendant. *Draper* for Defendant; *Agar* for Plaintiff.

Furnis against Hallom. Easter 22 Geo. 2.

AWARD that Defendant should pay Plaintiff, or Mr. *William Cock* his Attorney, such Costs as Plaintiff was liable to pay, of an Action in the Peverel Court, and Costs of an Action at Common Law, between Plaintiff and Defendant and others, held to be uncertain, and not final. Costs to be taxed by the proper Officer, has been held good. The Authority of Arbitrators may be delegated to a known Officer; or if Costs are awarded generally, the sworn Officer may ascertain the *Quantum*. *Certum est quod certum reddi potest*. An Award may be good in Part and bad in Part; but the Objection here goes to the Justice of the Whole. Judgment on Demurrer for Defendant. *Booth* for Defendant; *Poole* for Plaintiff.

Powell against Rowles and his Wife. Mich. 25 Geo. 2.

Plaintiff declared in *Middlesex*; Defendant pleaded in Abatement under the Statute of Additions, That he was a Pawn-broker, and not a Yeoman, as called in the Declaration. Plaintiff replies an Original Writ *in placito prædicto* in *Gloucestershire*, wherein Defendant is called a Pawn-broker; to which Replication Defendant demurs, and Plaintiff joins in Demurrer. On Argument the Court held, that Continuances of the Original Writ in this Case

Case are not necessary; but that on an Original in *Gloucestershire*, Plaintiff cannot proceed in another County; nor have the Court any Jurisdiction in *Middlesex* under this Original in *Gloucestershire*. Defendant may be brought in after *Capias* returned *Non est inventus*, by a *Testatum* into any other County, but Plaintiff must come and proceed according to his Original Writ, and in the same County. Judgment *Quod Breve cassetur*. Draper for Defendant; Poole for Plaintiff.

Wade, junior, *against* Wadman, Gent. one of the Attornies, Administrator, &c. Hilary 25 Geo. 2.

Defendant demurred generally to Plaintiff's Declaration; Plaintiff joined in Demurrer; and on Argument two Objections were made by Defendant's Counsel, first, That it was not alledged in the Declaration that Administration had been granted to Defendant; and secondly, That Defendant being sued as Administrator, ought, in that Capacity, to have been prosecuted by Original Writ, and not by Bill, as at present. The Court over-ruled both Objections. As to the first, they held, that calling Defendant Administrator of the Goods and Chattels of the Intestate, was sufficient, without alledging that Administration had been granted to him. And as to the second, (which is objected as Matter of Abatement, and not shewn for Cause of Demurrer) the Fault is cured by Defendant's Appearance; 'tis no Objection after Appearance. Poole for Defendant; Agar for Plaintiff.

Spencer and another, Executors, *against* Thomlinson, one, &c. by Bill. Easter 25 Geo. 2.

Plaintiffs concluded their Declaration (*And thereof they bring Suit, &c.*) instead of (*pray Remedy, &c.*) Defendant demurred, and shewed said Conclusion for Cause; Plaintiff joined in Demurrer. On Argument, the Court inclined to think either of these Ways of concluding good; but for the sake of keeping up to the old constant Form of *prays Remedy, &c.* proposed an Amendment, without Payment of Costs; to which both Sides consented; and a Rule was made accordingly. Poole for Defendant; Draper for Plaintiff.

Nesbitt *against* Farmer. Mich. 27 Geo. 2.

Defendant, after obtaining a Judge's Order for Time to rejoin, (rejoining issuably) demurred to Plaintiff's Replication. Plaintiff moved to set aside the Demurrer, and obtained a Rule to shew Cause. Whereupon *Draper* for Defendant insisted, That as the Replication stood, Defendant could not with Safety rejoin issuably, but must demur, to bring the Merits of his Case in Question. The Court held a Demurrer not to be an issuable Rejoinder within the Judge's Order; but that whether it was necessary or not, might appear. Plaintiff was ordered to join in Demurrer, and the Rule was enlarged till after the Argument. *Poole* for Plaintiff.

Deaf and Dumb Persons.

Earl of Jersey and another, *Demandants*; Barnes and another, *Tenants*; Lady Mary O'Bryen, *Vouchee*.
Hil. 26 Geo. 2.

THE Vouchee being naturally Deaf and Dumb, Lord Chief Justice wrote down a Question, as to her Consent to suffer Recoveries of Estates in three different Counties, *Bucks, Oxon* and *Berks*. Mr. *Henry Barker* being sworn, explained the Question to her by Signs, which she answered by Signs, and then he deposed that she understood the Question, and was willing the Recoveries should pass; she also under-wrote the Question with these Words, (viz.) *Yes, I do know and consent*; and signed her Name *Mary O'Bryen*; whereupon the Recoveries were passed at Bar. *Vide Griffin against Ferrers, Easter 6 Geo. 1.* Sir *G. Gooke's* Cases. Several similar have happened, particularly one, as to Service of a Deaf and Dumb Woman, Tenant in Possession of Premises, with a Declaration in Ejectment, by signifying to her the Meaning and Contents of such Declaration, and the Notice subscribed, by Means of a Person who explained the same to her by significant Signs, which she understood,

as the Person explaining made Affidavit ; and thereupon the Court made the usual Rule for Judgment, unless the Tenant, &c. appeared. *Goodtitle, on the Demise of Wessell, Esquire, against Badtittle, in Ejectment, Susannah Grey, Tenant. Hil. 22 Geo. 2. Willes for Demandants.*

Discontinuance.

Hale, Administrator, *against* Norton. Mich. 6 Geo. 2.

PER Cur': Plaintiff though an Administrator cannot discontinue without Payment of Costs.

Pym *against* Warren.

Plaintiff moved to discontinue upon Payment of Costs after Judgment given on Demurrer for the Plaintiff (but not entered upon Record) and a Writ of Error brought, and Bail put in thereupon. The Court refused to make a Rule to discontinue without Payment of Costs on the Writ of Error.

Heber, an Attorney, *against* Bishop. Mich. 7 Geo. 2.

Plaintiff obtained a Rule to discontinue on Payment of Costs. Defendant moved to discharge the Rule upon an Affidavit that he had been a second Time arrested for the same Cause of Action before the Rule to discontinue was obtained. The Court refused to make any Rule. Plaintiff may discontinue at any Time. *Wright* for Defendant.

Mellor *against* Hutchinson.

THIS was in Replevin ; the Avowant had justified under a Distress for Rent. Plaintiff demurred to the Avowry, and upon arguing the Demurrer, Court gave Judgment for the Avowant.

Eyre

Eyre afterwards moved for Plaintiff to discontinue; but Court denied the Motion. The Question determined upon Demurrer being upon the Construction of the Act of Parliament, which is the Merits of the Cause. *Skinner* for Defendant.

Vanfleet against Crofs. Hil. 7 Geo. 2.

Plaintiff had obtained a Rule to discontinue (which was drawn up in the following Manner, (*viz.*) that Plaintiff *shall* discontinue, and *shall* pay Costs, &c.) Upon an Affidavit that Defendant being indebted to Plaintiff, a Writ was issued against him; but Defendant having paid the Money before the Arrest, the Sheriff's Officer to whom the Warrant was delivered was countermanded from proceeding, notwithstanding which he arrested Defendant, who thereupon brought an Action for false Imprisonment in the Court of *King's Bench*. The Costs upon the Rule had been paid, but the Discontinuance was not entered upon Record. The Court thought the Rule not drawn up in common Form, which is, that the Plaintiff *have Leave or be at Liberty* to discontinue; and therefore discharged the Rule. The Action brought in the *King's Bench* appeared to be vexatious, and Plaintiff, by discharging his Rule to discontinue, had an Opportunity of pleading the Action in this Court still depending, or justifying under the *Capias*, as he should be advised.

Hook, Administrator, against Hayward. Easter 13 Geo. 2.

A *Sci. Fa.* was sued out by Plaintiff to revive a Judgment recovered by Plaintiff's Intestate. Defendant craved Oyer of the Letters of Administration, which being defective, Plaintiff dropped the Proceeding on *Sci. Fa.* and having procured sufficient Letters of Administration, brought an Action of Debt on the Judgment in the Court of *King's Bench*. Defendant pleaded the Writ of *Sci. Fa.* pending in this Court in Abatement, and Plaintiff replied a Discontinuance (entered without Leave of the Court). Defendant moved to set aside the Discontinuance, and the Question was, Whether or no Plaintiff could discontinue without Leave of the Court? The Practice was variously reported, and it not appearing whether the

the Roll whereupon the Discontinuance was entered was brought in before or after the Plea in the *King's Bench*, the Rule to shew Cause why the Discontinuance should not be set aside was discharged, Plaintiff consenting to pay Costs of the Plea in Abatement, and that Defendant should be at Liberty to plead *de novo*. *Prime* for Plaintiff; *Agar* for Defendant.

Wignall *against* Bouch, in Replevin. Mich. 17 Geo. 2.

AFTER Joinder in Demurrer, Plaintiff obtained a Rule for the Avowant to shew Cause why he should not discontinue, on Payment of Costs. It was objected for the Avowant, that a Discontinuance in Replevin is very different from a *Nonpros*; and that after a Discontinuance, a Writ of *Return' Habend'* could not be awarded. The Court did not enter into the Consideration of that Matter, because the Parties entered into a Rule by Consent to stay Proceedings on Payment of the Rent in Arrear, with Costs. *Wynne* for Plaintiff; *Draper* for Avowant.

Ejectments.

Kirwood *against* Backhouse. Mich. 6 Geo. 2.

In Ejectment. THE Wife of the Tenant in Possession, on a Person's knocking at the Door of the House in order to serve the Declaration, opened a Wicket in the Door and looked through it, and was then acquainted with the Contents of the Declaration, and the *English* Subscription was read to her, and immediately after, and before the Declaration could be tendered to her, she shut the Wicket: Whereupon the Declaration was fixed upon the Door (as by Affidavit appeared); and it was sworn that the Tenant in Possession afterwards acknowledged the Receipt of the Declaration on the Day it was tendered to his Wife and fixed upon the Door. The Service was held insufficient, because the Tenant's Acknowledgment that he received the Declaration is not enough; an actual Delivery, or Tender and Refusal; ought either to be proved or confessed.

Negative

Negative *against* Positive.

Ex dim' Parsons. **P**ER Cur': An Ejectment on a vacant Possession in *London* or *Middlesex* on the new Act of Parliament may be moved at any Time in Term, and is not within the old Rule concerning Motions in Ejectment. *Trin. 32 Car. 2.* which relates only to Declarations in Ejectment served upon Tenants in Possession.

Balderidge *against* Paterfon. Trin. 6 & 7 Geo. 2.

Ex dim' Hudspeth. **W**YNNE moved that the Landlords, viz. *Roger Preston, Jane Preston, Widow, and James Goodwill,* might be made Defendants without the Tenant in Possession, who refused to appear. Denied *per Cur'*; but the common Rule was made to add the Landlords to the Tenants in Possession.

Peaceable *against* Troublesome. Mich. 7 Geo. 2.

reld in Court. Thakke J.R. 351- **I**n Ejectment. **T**HE *English* Notice at the Foot of the Declaration was subscribed by the nominal Plaintiff instead of the casual Ejector, which the Court held bad, and discharged the Rule for Judgment. Same Case in *B. R. Hil. 2 G. 2. Barker against Meresfield.* Baynes for Plaintiff; Hawkins for Defendant.

Roe, on the Demise of Bird, *against* Doe.

In Ejectment. **T**HE Declaration in this Cause was delivered to Tenant in Possession after the Essoin-Day, to wit, *October 26.* within Term, and upon Affidavit of such Service *Chapple* moved for Judgment, alledging that the Declaration being delivered before *Cras' Animar'* was well delivered, so as to intitle the Plaintiff to his Judgment this Term. *Skinner* for the Tenant opposed the Motion, and insisted, that all Declarations in Ejectment must be delivered before the Essoin-Day, otherwise Plaintiff cannot have

have Judgment till the subsequent Term; and so the Court held, Declaration in Ejectment being the first Process; in other Cases a Writ precedes the Declaration.

Smalley against Neale. Hil. 7 Geo. 2.

In Ejectment. **T**HE Tenant, who was an unmarried Man, absconded, and left a Servant in his House, to recover the Possession whereof this Ejectment was brought. *Chapple* moved for Judgment, upon an Affidavit that a Copy of the Declaration was served upon the Servant, and another Copy was affixed on the Street-Door, which the Court held to be sufficient Service within the late Act of Parliament, and made a Rule accordingly.

Birkbeck against Hughes.

SKINNER moved for Judgment against the Casual Ejector. The Affidavit set out, that Deponent did serve *A. B.* Tenant in Possession, or *C.* his Wife. *Per Cur'*: It is not certain as to either. No Rule.

Right against Wrong. Easter 7 Geo. 2.

In Ejectment ex dim' Streak. **W**YNNE moved, that the Tenant in Possession might shew Cause, why he should not appear and defend the Title, his Landlord having tendered him an Indemnity. Court refused to make that Rule, but enlarged the Time to appear.

Makepeace against Hopwood.

In Ejectment. **S**KINNER moved in Arrest of Judgment, the Words in the Declaration being *one Messuage or Tenement*, which is too uncertain; Tenement is all a Man holds, and after Judgment the Sheriff cannot tell of what to deliver Possession. The common Rule was made to stay Judgment till Cause shewn,

shewn, and afterwards, upon hearing *Darnal* for Plaintiff, the Judgment was arrested.

Halfal against Wedgwood.

In Ejectment ex dim' Lord Leigh. **H**AWKINS moved for Judgment upon an Affidavit that *Wightman* the Tenant in Possession refused to accept the Declaration when tendered to him: That he was acquainted with the Contents; that he brought a Gun, and swore he would shoot the Person who tendered the Declaration, if he did not get off his Land: Whereupon the Declaration was laid down on the Ground in the Presence of *Wightman* and his Man, whom *Wightman* ordered not to take it up. The Court were of Opinion that these Circumstances amounted to good Service, and made a Rule for Judgment. *Per Cur'*: It is the same Thing as a continual Claim, where the Party comes as near the Land as he can to make his Claim for fear of his Life. The Case of *Kirwood* and *Backhouse* in *Mich. 6.* is not like this Case. There the Declaration was never tendered; here Tender and Refusal are proved.

Ellis against Knowles, on the Demise of Lord Falconbridge.

In Ejectment. **D**ARNAL moved for Judgment against the Casual Ejector, as to some of the Defendants who were acquitted at the Trial by reason of their not confessing Lease, Entry and Ouster, as appeared by an Indorsement on the *Postea* (Plaintiff obtained a Verdict against the other Defendants who did confess;) he quoted 13 *Gul. 3. per Holt* in the Home-Circuit, and mentioned a *Devonshire* Cause in the *King's Bench*, but not the Parties Names nor the Term. Court made a Rule to shew Cause, which was afterwards made absolute.

Harding against Greensmith, on the Demise of Baker. Trin. 7 & 8 Geo. 2.

In Ejectment. **T**HE Affidavit of Service of Declaration was as follows, *viz.* That Deponent did serve the Wives of *A.* and *B.* who, or one of them, are Tenants in Possession,

sion, &c. The Court refused to make a Rule for Judgment. The Affidavit is defective.

Thredder *against* Travis. Mich. 8 Geo. 2.

In Ejectment, CHAPPLE moved for Judgment in London, Possession vacant. where the Notice to appear was not on the first Day, but in the Beginning of Michaelmas Term. The Court made a Rule for Judgment, unless some Person claiming Title appeared within four Days.

Jones, upon Demise of Thomas, *against* Hengest.

In Ejectment. RULE was made to shew Cause why a *Non-pros* for not confessing Lease, Entry, and Ouster should not be set aside, there being a material Variance between the Issue and the Record, Defendant therefore did not confess. *Per Cur'*: Confession would not have been a Defence, Defendant might have afterwards moved to set aside the Verdict for the Variance; the *Non-pros* is regular; but let it be set aside upon Payment of Costs. Chapple for Lessor of Plaintiff; Eyre for Defendant. Gulliver *against* Appleyard, Mich. 4 Geo. 2. quoted.

Scrape *against* Hunt. Hil. 8 Geo. 2.

In Ejectment. THE Declaration was delivered to the Daughter of Tenant in Possession, and she was acquainted with the Contents; the Tenant afterwards acknowledged the Receipt of it. Held sufficient Service.

Goodright, on the Demise of the Duke of Montague, *against* Wrong.

GLYDE moved, That Mr. Pigot, who claimed Title, might be made Defendant instead of the late Tenant, who had quitted the Possession. Denied.

Roe against Doe.

Ex dim' Jefferyes and others in Ejectment. **T**HE Declaration was left with the Father of the Tenant in Possession with the usual Subscription, and he was acquainted with the Contents; after which and before the Effoin-Day the Tenant acknowledged the Receipt of it. Held sufficient Service. *Belfield.*

Goodright against Moore. East. 8 Geo. 2.

Ex dim' Tonkyn. **M**OTION to stay Proceedings on Payment of Mortgage-Money and Costs, pursuant to Statute 7 Geo. 2. *Belfield* for Plaintiff shewed Cause, and produced an Affidavit that the Mortgagee had been at great Expence in necessary Repairs of Part of the Tenements in his Possession, (the Ejectment was brought for the Residue) and therefore prayed that the Prothonotary might be directed to make Allowance for such Repairs. *Per Cur'*: The Rule must follow the Words of the Statute. The Prothonotary will make just Deductions and Allowances.

J. R 639
2. Briggs *Filed 644* **Grimstone against Burgers and others, on the Demise of Lord Gower and others.**

2. Luss 25. 1749
1. King 25. 1771 **M**OTION to consolidate sixteen Ejectments in one, after sixteen several Issues joined in *Hilary* Term last. It was urged for Plaintiff, that Issues were delivered and paid for so long ago as Mar. 12. last, but the Court held that it was necessary for Defendants to pay for the Issues, to prevent Judgment, and ordered the Ejectments to be consolidated.

N. B. Each Declaration contained a large Number of Messuages, and they were Word for Word the same. Had each been for one Messuage only, the Plaintiff might have tried them separately. *Skinner* and *Eyre* for Defendant; *Wright* for Plaintiff.

Ex parte Beauchamp and Burt. Trin. 10 Geo. 2.

CHAPPLE moved, that these Persons who claimed Title to some Lands and Tenements *in Com' Mid'* (the Possession whereof was vacant) might be informed by Mr. *Banister* (Attorney for a Person who was carrying on a Proceeding in Ejectment in the old Way, under a Lease sealed upon the Premises) of the Names of the Parties in that Ejectment, in order that *Beauchamp* and *Burt* might appear and defend the Title. It was urged by *Eyre* for *Banister*, that in all Cases of vacant Possession, unless such as are within the late Act of Parliament concerning Landlords and Tenants by Lease, with a Clause of Re-entry, no Instance can be shewn where any Person claiming Title hath been let in to defend, but he that can first seal a Lease upon the Premises, must obtain Possession, and any other Person claiming Title may eject him if he can; and by the Course of the Court no Defence can be made in these Cases but by the Defendant in the Ejectment, who is a real Ejector. The Court took Time to consider of this Matter, but never made any Rule. The Practice hath constantly been as stated by *Eyre*. *Chapple* produced two old Rules of Court concerning Ejectments, *Trin. 22 Car. 2.* and *Hil. 1659*, and cited *Stiles's Reports* 368.

Felton against Ash.

MR. Justice *Fortescue* had made an Order pursuant to the late Act of Parliament to stay Mortgagees Proceeding in Ejectment upon bringing Principal, Interest, and Costs into Court, and a Rule was made to make the Order a Rule of Court *nisi causa*; but it afterwards appearing to the Court that Notice had been given by the Mortgagee to the Mortgagor that he insisted upon Payment of two Bonds, which were a Lien upon the Estate, the Case was adjudged to be out of the Act of Parliament, and the Rule *Nisi* was discharged.

Roe against Doe, on the Demise of Fitzherbert.

SKINNER had obtained a Rule for the Infant Lessor of the Plaintiff to shew Cause why he should not give Security for Payment

ment of Costs in Case he failed in the Suit, which was discharged on hearing. *Hawkins* for the Plaintiff.

Doe against Roe, on the Demise of Dry.

In Ejection. **U***RLIN* moved for Judgment against the Casual Ejector, upon an Affidavit that the Declaration was tendered to the Wife of the Tenant in Possession, who refused to open the Door of the House, but looked out at a Parlour Window, and was acquainted with the Contents, and the Subscription was read to her; after which, she refusing to accept the Declaration, it was put in at the Window to her. The Service was held sufficient.

Roe, on Demise of Jones, against Doe. Easter 11 Geo. 2.

In Ejection. **S***PARK*, an Attorney, entered into the common Rule by Consent, and left it in the Prothonotary's Office; after which Judgment was signed against the Casual Ejector. A Rule was made to shew Cause why the Judgment should not be set aside; but no Appearance being entered with the Filazer for the Tenants in Possession, and the common Rule not being marked by the Filazer, as it ought to have been before left in the Prothonotary's Office; and *Spark* having entered into the Common Rule for *Page*, one of the Tenants, without his Consent; the Rule to shew Cause was discharged with Costs. *Eyre* and *Prime* for Tenants; *Skinner* for Plaintiff.

Goodright, on the Demise of Russell, against Noright. Trin. 11 & 12 Geo. 2.

In Ejection. **T***HE* Judgment irregularly obtained was set aside, and Possession ordered to be restored; but the Lessor of the Plaintiff (who held the Possession) absconding, the Rule was ineffectual. *Eyre* moved, on Behalf of the late Tenants in Possession, for a Writ of Restitution, which was ordered.

Hobson,

Hobson, on the Demise of Bigland, *against* Dobson.
Mich. 12 Geo. 2.

In Ejectment. **W**YNNE moved for the Landlord to defend, upon Statute 11 Geo. 2. The Court objected that this Motion could not properly be made 'till after Judgment signed against the Casual Ejector; and that Affidavit ought to be produced of the Tenant's Refusal or Neglect to appear. *Wynne* answered, That immediately after Judgment signed against the Casual Ejector, Plaintiff might take Possession. The Court held the Affidavit necessary, and therefore made no Rule; but declared that the Intent of signing Judgment against the Casual Ejector, was only that the Plaintiff, after having tried his Cause against the Landlord, (the Tenant not being a Party) might have the Benefit of his Verdict, and take Possession under the Judgment, which under such Verdict he could not. It seems reasonable (upon a proper Affidavit) to grant a Rule to shew Cause, before Judgment against the Casual Ejector can be signed, to prevent the ill Consequence of taking Possession immediately after.

Roe, on Demise of Gohard, *against* Doe.

EYRE moved upon Statute 11 Geo. 2. that the Landlord might be added Defendant to *C. D.* one of his Tenants, who did appear to defend for the Tenements in his Possession; and that as to the Residue of the Tenements in Possession of *T. M.* another Tenant, who refused to appear (*as per* Affidavit) the Landlord might appear and defend singly, and a Rule was made accordingly; and that Plaintiff might sign Judgment against the Casual Ejector, as to the Tenements in Possession of *T. M.* but that the Writ of *Habere facias possessionem* be stayed 'till farther Order.

Plumb against Savage and his Wife, on Demise of Byam. Trin. 13 Geo. 2.

In Ejectment. **R**ULE for Lessor of Plaintiff, and Mr. *Peacock* his Attorney, why not an Attachment for prevailing upon Tenant in Possession, by undue Practices, to deliver Possession of the Premises (which Defendants claimed as Tenant's Landlords) pending the Suit; and after Rule obtained by Defendants to be at Liberty to defend their Title, pursuant to the late Act of Parliament (the Tenant refusing to appear) and entering into the common Consent Rule; Rule discharged, it being no Contempt of the Court, but a Fraud, which ought to be prevented, and is not remedied by the late Act. Ejectment is a Fiction, and in the Breast of the Court. Tenants should be bound not to change the Possession. *Skinner* and *Prime* for Plaintiff's Lessor and *Peacock*; *Agar* for Defendants.

Benn against Denn, on the Demise of Mortimer and his Wife.

In Ejectment. **A** Former Ejectment had been brought on the Demise of the same Lessors, wherein Defendants had a Verdict, and obtained an Attachment against *Robert Mortimer*, one of the Lessors, for Non-payment of Costs; whereupon he was arrested and detained in Custody. And now *Bootle* moved for Defendant to stay Proceedings in this Ejectment 'till the Costs of the former were paid: But *per Cur'*, The Lessor of the Plaintiff being in Custody upon said Attachment for Costs, which is in the Nature of a *Ca. Sa.* there is no Reason to grant the Rule.

Farmer against Thrustout, on the Demise of Miles.

In Ejectment. **T**HE Declaration was tendered to the Wife of the Tenant in Possession upon the Premises. She was acquainted with the Contents thereof, and of the Subscription, through a Window, which she refused to open, or receive the Declaration;

claration; and thereupon the Declaration was left upon the out-side Ledge of the Window. The Person who tendered the Declaration swore, that he heard the Woman's Voice distinctly through the Window; and was well assured she heard what he said by the Answers she gave him. The Service was held sufficient, and the common Rule for Judgment was made. *Prime* for Plaintiff.

Fenn against Denn.

In Ejectment for Lands **B**IRCH moved for Judgment. A Rule in Denbighshire, Wales. made.

Tupper against Doe, on the Demise of Mercer and Woollett.

In Ejectment. **A** Declaration in Ejectment served on the Churchwardens and Overseers of a Parish, who rented a House for harbouring some of the Parish Poor, and did not otherwise occupy the House than by placing the Poor in it. Deemed sufficient Service, and a Rule made for Judgment. *Agar* for Plaintiff.

Roe against Doe, on the Demise of Humphreys.

In Ejectment. **T**HE Tenant in Possession not appearing at the Trial to confess Lease, Entry and Ouster, Judgment was entered against the Casual Ejector. *Adney* an Attorney brought a Writ of Error in the Name of the Casual Ejector, which he was ordered to *non-pros* at his own Expence, and pay Costs, but was excused from farther Censure, it appearing that he had been informed by some of the Curstors Clerks, that such a Writ of Error might be brought. *Wynne* for the Lessor of the Plaintiff. *Urline* for *Adney*.

Goodright, on the Demise of Rowell, *against* Vice,
in Ejectment. Trin. 13 & 14 Geo. 2.

Defendant at the Trial not appearing to confess Lease, Entry and Ouster, a Nonsuit happened, and afterwards Plaintiff's Lessor, instead of taking his Remedy for Costs taxed upon the common Rule, as he ought to have done, entered Judgment against the Casual Ejector, sued out a *Fi. fa.* against Defendant's Goods, and levied his Costs thereon, acting as special Bailiff himself. An Action was brought by Defendant in the *King's Bench* for this irregular Levy, against Plaintiff's Lessor and *Kimber* his Attorney; and after Special Pleadings therein, Defendant moved here to set aside the *Fi. fa.* and Court ordered Restitution to be made, and Defendant's Costs to be paid by Plaintiff's Lessor and *Kimber*. And by Consent, the Action in the *King's Bench* to be discontinued, without Costs, and no other Action to be brought. *Wynne* for Defendant; *Hussey* and *Draper* for Plaintiff.

L. 325
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241-2 & 1107
Bingham, on the Demise of Lane and others, *against*
Gregg, in Ejectment. Trinity 14 & 15 Geo. 2.

RULE on the Statute 7th Geo. 2. to shew Cause why Proceedings should not be stayed, on Payment of the Mortgage-Money and Costs, was made absolute; Lessors of the Plaintiff, Assignees of the Mortgagee, insisted to be paid a Bond and a Simple Contract Debt due to themselves in their own Right. *Per Cur'*: A Bond is no Lien in Equity, unless where the Heir comes to redeem. *Prime* for Plaintiff; *Bootle* for Defendant.

Stiles, on the Demise of Redhead, *against* Oakes, in
Ejectment. East. 15 Geo. 2.

Defendant, the Landlord, admitted to defend by special Rule, did not appear at the Trial to confess Lease, Entry and Ouster, whereby Plaintiff was nonsuited. Plaintiff produced the *Possea*, and moved for Leave to take out Execution against the Casual Ejector,
upon

upon the Judgment signed by virtue of the special Rule to defend, which was granted absolutely. *Agar* for Plaintiff.

Goodtitle *against* Thrustout, in Ejectment, on the Demise of Massa. Trinity 16 Geo. 2.

JOHN Cryshall, Tenant in Possession, upon a *Sunday* acknowledged the Receipt of the Declaration, which before the Effoign Day had been delivered to his Daughter, and she acquainted with the Contents. This was held sufficient Service, and the Common Rule was made for Judgment *Nisi*, &c. *Willes* for Plaintiff.

Thrustout, on the Demise of Dunham an Infant, *against* Percivall and others, in Ejectment,

PRIME, for Defendant, moved and obtained a Rule to shew Cause why Proceedings should not be stayed till a good Plaintiff be named, or Security, to be approved by the Prothonotary, be given by the Infant Lessor, for securing Costs to Defendant, in Case of a Nonsuit or Verdict for Defendant. *Draper* for the Lessor urged, that though in the *King's Bench* such Rules have been made, yet the Practice here is otherwise, because the Infant is liable to an Attachment for Non-payment of Costs. He quoted *Throgmorton against Smith*, *Easter* 5 Geo. 2. in *B. R.* *Robinson, on the Demise of Meager*, *against Burton*, *Mich.* 3 Geo. 2. in *C. B.* where Attachments for Non-payment of Costs were granted against Infants of very tender Age; and observed, that the Infant who is enabled to make a Lease in Ejectment, must take it with all its Inconveniencies. *Per Cur'*: In all other Suits, an Infant under Years of Discretion cannot be guilty of a Contempt. *Non diuturnitas temporis sed soliditas rationis est consideranda.* Rule absolute.

Duckworth, on the Demise of Tubley and others,
against Tunstall, in Ejectment. Mich. 16 Geo. 2.

Lessors of the Plaintiff were both Devisees and Executors, and in each Capacity Rent was due to them. Defendant moved to stay Proceedings, upon Payment of the Rent due to Lessors of Plaintiff as Devisees, they not being intitled to bring an Ejectment as Executors. There appeared to be a mutual Debt due to Defendant by simple Contract, and Defendant offered to go into the whole Account, taking in both Demands as Devisees and Executors, having just Allowances; which Lessors of Plaintiff refused. The Rule was made absolute to stay Proceedings, on Payment of the Rent due to Lessors as Devisees, and Costs. *Prime and Bootle*, for Defendant; *Wynne* for Plaintiff.

Goodright on the Demise of Griffin, *against* Fawson,
 in Ejectment.

THIS Ejectment was brought for one Messuage, with the Appurtenances, in the Parishes of *St. John the Baptist* and *St. Michael*, in the City of *Coventry* and County of the same City, or one of them; and after a Verdict for Plaintiff, the Judgment was arrested. The Plaintiff's Excuse for describing the Parish where the Messuage stood, as above, was, That by a late Act of Parliament the first Parish was to be divided into two, and the Division was not yet settled. The Court held the Description to be totally uncertain; and that one of the Parishes cannot be rejected as Surplusage. In Real Actions, and where the Possession of Lands is to be recovered, Certainty is always required. In this Case, Defendant could not know what to defend for, nor the Sheriff of what to give Possession. *Willes* for Defendant; *Draper* for Plaintiff.

Doe, on the Demise of Henant, alias Henden, *against* Thomas and others, in Ejectment. Hilary 16 Geo. 2.

Within the first four Days of the Term *Birch* moved for Leave to plead Ancient Demesne, upon an Affidavit that the Premises in Question were reputed to be Lands in Ancient Demesne; and a Rule was made to shew Cause, and afterwards absolute upon hearing Counsel on both Sides. The Affidavit is sufficient to shew a probable Cause to plead this Plea; and any other Plea to the Jurisdiction of the Court may be pleaded in Time, without Motion. *Skinner* for Plaintiff.

Bagshaw, on the Demise of Ashton *against* Toogood.

KETELBEY moved, upon an Affidavit of tendering the Declaration to *Jane Reynolds*, Widow, Tenant in Possession, which she refusing to accept, it was left on the Floor, in her Presence; and she retiring into a Parlour and shutting the Door, the Person serving read the Subscription aloud, so as she might hear it; which was held sufficient Service; and the Common Rule for Judgment was made.

Fenn, on the Demise of Rickattson, *against* Marriot, Esquire, and his Wife, in Ejectment. Mich. 17 Geo. 2.

FOR the Future, let Rules for Leave to take out Execution by the Plaintiff against the Casual Ejector, after Verdict against the Landlord made Defendant instead of the Tenant in Possession, pursuant to the late Statute, be absolute, and not to shew Cause. *Eyre* for Plaintiff.

Roe against Doe, on the Demise of Stephenson, in Ejectment, in Middlesex:

PRIME moved for Judgment, upon an Affidavit of Service of a Declaration intituled *Trinity Term* 17th, instead of 16th & 17th *Geo. 2.* and prayed a Rule for Judgment, unless the Tenants appeared within four Days after Notice. He quoted *York, on the Demise of Chambers, against Ferris*, where the Declaration was intituled *Trinity* 4th, instead of 3d & 4th *Geo. 2.* in *Cornwall*, moved in *Michaelmas Term* 4th; and such a Rule was made: But upon Affidavit of Service thereof, the Court, by a second Rule, enlarged the Time for appearing, till four Days after the next issuable Term [*Hilary*], as usual in Country Causes. *Per Cur'*: The Declaration in Ejectment is the first Process; and there is nothing precedes whereby it can be amended. This single Precedent, without Opposition, is not of Weight sufficient to overturn the general Practice; and the first Rule does not seem to have been well considered. A new Declaration might have been delivered before the Effoign Day of *Hilary Term*, and Plaintiff would have been as forward thereby as by his former Declaration; and in Country Causes, where Declarations are of *Trinity*, the Notice may be good to appear in next *Hilary*, (passing over *Michaelmas*) though not the usual Practice. No Declaration in Ejectment in the *King's Bench*, or here, can be amended before Appearance; and afterwards in Form only, but not in the Demise, or other Matter of Substance. The Court can make no Rule in this Case.

Roe against Doe, on the Demise of Hyde, in Ejectment. Easter 18 Geo. 2.

Dec. 4 Dec 1796
40. Paper No. 975
12th. R. 1. 47 and 826
THE Tenants had the Forenoon of the 29th *April* this Term to appear in; *Foster*, the Landlord, moved to add himself to the Tenants, but no Appearance being entered, Plaintiff on the 30th signed Judgment against the Casual Ejector. The Landlord afterwards, without disclosing to the Court what had been previously done, applied for the Conditional Rule, as a Matter of Course, and by Virtue thereof on the 1st *May* appeared alone, without the Tenants.

nants. *Prime*, for Plaintiff, moved for Leave to take out Execution on the Judgment; and on shewing Cause, the Judgment appeared to be regular, and the Appearance out of Time. Plaintiff offered to waive his Judgment, if the Landlord, who resided at *Jamaica*, would give Security for Costs; to which his Counsel not consenting, the Court made the Rule absolute, for Leave to take out Execution. *Skinner* and *Draper* for the Landlord.

Goodtitle, on the Demise of Symons, Esq; *against* Thrustout, in Ejectment, Clarke, Esq; Landlord. Trin. 19 & 20 Geo. 2.

THE Declaration was of *Hilary* Term, served with Notice to appear in *Easter* Term last, and not moved till this Term, when a Rule was made for Judgment, unless the Tenant should appear within six Days after Notice. The Landlord prayed for the Conditional Rule, and for Leave to plead Ancient Demesne, upon an Affidavit that the Premises were Ancient Demesne; and obtained a Rule to shew Cause. *Per Curiam*: The Landlord, by the late Statute, is to enter into the Common Rule by Consent; before that Statute, he might have been added a Defendant; and if he had applied in Time, must have had Leave to plead Ancient Demesne. He is to be considered in all Respects in the same Case as the Tenant in Possession, but must apply according to the Course and Rules of the Court. If the Plaintiff should prevail on this Plea to the Jurisdiction of the Court, the Judgment must be, that Defendant shall answer over. Therefore, if this Plea be not confined to a Time certain, great Delay of Justice must follow. The Rule discharged, as to pleading Ancient Demesne, because the Application was not made in Time, that is, within the first four Days of this Term. *Belfield* for *Clarke*; *Boote* and *Eyre* for the Lessor of the Plaintiff.

Deighton, on the Demise of Roberts and his Wife, *against* Foster. Trin. 21 Geo. 2.

RULE to shew Cause why Defendant should not have Leave to plead Ancient Demesne. Objected, and allowed, That the Motion was not made within the first four Days of the Term.

The Rule discharged. As the Declaration must be delivered before the Essoign Day, the Party may always apply within the first four Days of the Term; and though the Appearance in Ejectment is generally entered afterwards, yet it is always considered as an Appearance of the first Day of the Term. *Bootle* for Defendant; *Poole* for Plaintiff.

, on the Demise of Preston, *against* , in
Ejectment. Hil. 21 Geo. 2.

IT appearing, by Affidavit, that one *Geldart*, the Tenant in Possession, and his Wife, both absconded, and could not either of them be served with a Declaration in Ejectment; and that they had left a Woman Servant in the House on the Premises, in whose Presence a Declaration was fixed up. The Court made a Rule for the Tenant to shew Cause why Service of a Declaration on his Servant, at his House, should not be deemed good; and directed the Rule to be served in that Manner.

Short, on the Demise of Elmes, *against* King. Easter
22 Geo. 2.

MRS. *Northcot*, the Tenant in Possession, a single Woman, absconded and secreted herself in the Messuage in Question, and could not be personally served with a Declaration in Ejectment. Rule to shew Cause why Service of the Servant, at the House, should not be good. This Rule to be served on the Servant at the House. *Poole* for Plaintiff.

Orion *against* Mee. Mich. 25 Geo. 2.

ORION, Defendant in an Ejectment brought in the Name of *Jacob Mee*, on the joint and several Demises of *Powers* and *Maddison*, having obtained a Verdict, and one of the Lessors being dead, and the other insolvent, *Orion* brought Debt on the Judgment against Plaintiff, and served Process on one *Jacob Mee* of *St. Ives, Com' Hunt'*, Yeoman, as Plaintiff; who moved to stay Proceedings, being totally ignorant of, and unconcerned in the Matter. On shewing Cause, Mr. *Huske*, of *St. Ives*, was alledged to be Attorney for Plaintiff in said Ejectment, wherein he had made Use of said *Mee's*

Mee's Name. Upon which the Rule was enlarged, and *Huske* ordered to shew Cause why he should not pay *Orion's* Costs taxed in said Ejectment. *Huske's* Affidavit being laid before the Court, it appeared, that not he, but one *Stephenson*, formerly his Clerk, (to whom he had resigned his Business long before said Ejectment brought, and intirely left off Practice) was Plaintiff's Attorney. *Stephenson* made Affidavit, that he found *Jacob Mee* to be the usual Name made Use of for Plaintiff in Ejectment in *Huske's* Office; that he used it purely as fictitious, and not as the Name of an existing or real Person. Lord Chief Justice was of Opinion, That though *Stephenson* might have made a fictitious Plaintiff, yet as he has voluntarily made Use of a good Plaintiff, a real Person, dwelling in the same Town with himself, he ought to stand in his Place, and pay the Costs. The three other Judges were of Opinion, That this Proceeding is to be considered purely as fictitious, and not real; and that *Jacob Mee* of *St. Ives*, or any other Person in human Nature, is not to be taken to be the real Plaintiff. It would be a dangerous Precedent, with Respect to Attornies, to make them liable to pay Costs, whenever a Defendant in Ejectment (Lessors of Plaintiff being insolvent) can find out a real Person of the same Name as the fictitious Plaintiff. Nominal Plaintiff and Casual Ejector stand in the same Light. Nominal Plaintiff cannot release the Action; Casual Ejector cannot bring a Writ of Error. No Imposition or Misbehaviour in *Stephenson* appears. Where Lessor of Plaintiff is abroad, or an Infant, Court, on Motion, interpose, and order a sufficient Plaintiff to be named, or Security given for Costs; but that is the ordinary Case within the common Course of Practice. Rule absolute to stay Proceedings against *Mee*; discharged as to *Huske*; no Rule upon *Stephenson*. Wherein Lord Chief Justice acquiesced; but said, he thought the Court, for the future, should extend the Rule for making a good Plaintiff, or giving Security for Defendant's Costs, to other Cases besides those before mentioned. *Willes* for Defendant and *Huske*; *Prime* for Plaintiff.

Roe, on the Demise of Stone and Wife, *against* Doe, in Ejectment. Trinity 26 & 27 Geo. 2.

HAYWARD, on the Behalf of *Stone*, moved, that the Conditional Rule entered into by *Stone's* Wife, by the Name of *Anna Field*, Widow, might be set aside, upon Affidavits tending to prove
 1 the

the Marriage between *Stone* and her ; and obtained a Rule to shew Cause. Whereupon *Prime* and *Agar*, on the Part of *Anne Field*, produced Affidavits to shew a long Cohabitation between her and the late Counsellor *Field* of *Hertfordshire*, as Husband and Wife. That he had a Child by her, and devised the Estate in Question to her, by the Name of his Wife. That *Stone* was married to, and lived with, another Wife. The Court thought the Validity of *Stone's* pretended Marriage to *Field* a fit Matter to be tried ; and (the Tenants in Possession having consented to appear) set aside the Judgment signed against the Casual Ejector, for Want of their Appearance ; and ordered *Field*, the Landlady, to be added a Defendant to the Tenants ; whereby *Stone*, if Plaintiff recovers, will be secure as to Costs.

Roe against Doe on the Demise of Fearnley and Tancred.

[Omitted in Hil. 26 Geo. 2.]

ON Affidavit, that the Tenant *Lydia Brooke* Widow absconded to avoid being served ; and also that she came into Possession surreptitiously, and of Service of Declaration in Ejectment on *James Brooke* her Son, who is her Servant and manages her Affairs, and lives in her Family ; Rule, that she shew Cause why such Service on her Son and Servant should not be deemed good Service, and leaving a Copy of this Rule at her House good Service, made absolute ; no Cause shewn.

Doe against Roe on the Demise of Wright.

[Omitted in Trin. 26 & 27 Geo. 2.]

ON Affidavit, that *Mary Oliver*, one of the Tenants is a Lunatick, that one Major *Cockburn* lives with, and transacts her Business, and has the sole Conduct thereof, and of her Person ; but would not permit the Deponent to have Access to her with Declaration in Ejectment ; whereupon it was delivered to *Cockburn*. Rule, that she and *Cockburn* both shew Cause why this Service should not be good, and Service of this Rule on him to be deemed good Service thereof. *Willes* for Plaintiff.

Fenn

Fenn on the Demise of Hildyard *against* Denn. Easter
27 Geo. 2.

DEclaration for an Entirety. Rule obtained by *Arrundall* Tenant in Possession to defend for two undivided Thirds only, and that for the Residue Plaintiff might take Judgment against the Casual Ejector; General Judgment signed, and Writ of Possession agreeably. No Indorsement of what Part to take Possession (as might have been;) Possession of the whole Premises taken, and afterwards two thirds (according to a Partition made by Plaintiff's Lessor) restored; Goods removed from Tenant's House, Part of the Premises, and some of them not brought back. The Court thought that a new general Rule should be made to alter the Practice of taking Judgment for the whole Premises, when Part is appeared for; held that the Sheriff did right in taking Possession of the whole, pursuant to the Writ. Rule to answer Matters in Affidavits by Sheriff's Officers discharged. Ordered Goods to be restored by Affidavit, and Possession of two Thirds of Premises; Lessor of Plaintiff and his Attorney (who had principally conducted the Transaction in the Country) to pay the Tenant Costs of this Application. *Prime* and *Poole* for the Tenant; *Willes* and *Wynne* for Plaintiff's Lessor, his Attorney and Sheriff's Officers.

Goodtitle on the Demise of Gardner *against* Badtitle.

THE Plea of *Marshall* and others Landladies and Tenants in Possession, who had appeared with the Filazer and entered into the common Rule, was left in the Prothonotary's Office, entitled with the true Name of the Cause, but by Mistake in the Body of the Plea, the Name of Plaintiff's Lessor was inserted (as the Person complaining) instead of that of the nominal Plaintiff. Plaintiff's Attorney looking upon this Plea as null and void, signed Judgment against the Casual Ejector, which Judgment was set aside with Costs as irregular; the Plea is properly entitled and not a Nullity. *Willes* for *Marshall* and others; *Prime* and *Wynne* for Plaintiff's Lessor.

Fenn on the Demise of Knights *against* Dean. Trin.
27 & 28 Geo. 2.

ON Affidavit, That *John Abbott* Tenant in Possession, secreted himself to prevent his being served with a Declaration in Ejectment, and could not be served, though frequent Endeavours had been used; and that the Declaration was delivered to his Daughter who kept his House, (being a Publick House, Part of the Premises in Question) and that she was acquainted with the Contents of the Subscription, The Court made a Rule for the Tenant to shew Cause why such former Service should not be deemed good Service, the Rule to be served on the Daughter at the House. This Rule was afterwards discharged, because the Affidavit whereupon 'twas made appeared to have been sworn before Plaintiff's Attorney as a Commissioner, but for no other Reason. *Prime* for Plaintiff; *Willes* for the Tenant.

Roe on the Demise of Agar *against* Doe.

THE Declaration was delivered to the Tenant in Possession without any Prothonotary's Name set thereon. Upon Affidavit of Service, the Court made a Rule for the Tenant to shew Cause, why upon Notice of the Prothonotary's Office Judgment should not be entered against the Casual Ejector, unless he (the Tenant) appeared within the usual Time; which Rule on Affidavit of Service was made absolute. *Willes* for Plaintiff.

Holdfast on the Demise of Dyson and his Wife *against*
Letgoe.

A Declaration, with Notice to appear in this Term, had been served on the Tenant in Possession before the Essoign Day, but no Prothonotary's Name was set thereon. Upon the Motion of Serjeant *Hewitt* for Plaintiff, the Court made a Rule, That unless *John Riley* Tenant in Possession, upon six Days previous Notice of that Rule, and Notice that the Declaration is entered in the Office of Mr. Prothonotary *Wegg*, should appear and plead within
four

four Days next after the End of the next Term (being the issuable Term, and this a Country Cause) to a new Declaration at the Plaintiff's Suit, and enter into the common Rule for confessing Lease, Entry and Ouster, Judgment might be entered against the Casual Ejector.

Goodtitle on the Demise of Cooper *against* Thrustout.
Hil. 28 Geo. 2.

IN the like Case (as next before) in a Country Cause, where the Declaration was delivered before the Essoign Day with Notice to appear in this Term; upon an Affidavit shewing the Service to be good in all Respects save the Want of Prothonotary's Name, the Court made the like Rule, unless *T. M.* and *W. M.* Tenants in Possession within six Days next after Notice of that Rule, and Notice that the Declaration is entered in the Office of Mr. Prothonotary *Wegg*, should appear, &c. Judgment might be entered against the Casual Ejector. *Prime* for Plaintiff.

Roe on the Demise of Leak Widow, and others, *against*
Doe. Mich. 29 Geo. 2.

WILLES for *Joseph Simpson* and *Mary* his Wife, who claimed Title to Part of the Premises (of which Part *Forwenston* and *Harrison* were Tenants, and refused to appear) applied upon Affidavit of the Fact for Leave to appear for said *Simpson* and Wife as to said Part. Rule made to shew Cause; on shewing Cause it appeared, That the Lessors of Plaintiff and said *Simpson* and Wife claimed Title as Devisees, the Lessors under one Will, and *Simpson* and Wife under another Will of the same Testator; and the Question to be decided was, which Will should prevail, The Lessors of Plaintiff had got the Start of *Simpson* and Wife; and by bringing their Ejectment first (the Tenants refusing to appear) would get into Possession without Defence, unless *Simpson* and Wife were permitted to defend. *Per Cur'*: This Motion is founded on the late Act of Parliament, 11 *K. Geo. 2.* The Court have no Jurisdiction to admit any Person to defend an Ejectment instead of the Tenant, except the Landlord only; And who is Landlord within the Act?

O

Not

Not every Person claiming Title; but one who is in some Degree of Possession, as receiving Rent, &c. the Clause of Forfeiture by Tenant, if he does not give Notice of Declaration to his Landlord, proves this. *Davy* quoted 2 *Strange* 1241. *Jones* on Demise of *Woodward* against *Williams*; where a Mortgagee was refused to be admitted to defend as Landlord; which Case (though not so reported) must be where the Mortgagee had not got into Possession. *Willes* for *Simpson* and Wife; *Prime* and *Davy* for Lessors Plaintiff.

Doe on the Demise of Deily *against* Roe. Easter 29
Geo. 2.

THE Affidavit of Service of Declaration, &c. was on the Wife of *Daniel Dougherty*, Tenant in Possession, as she informed Deponent, and as he verily believes held sufficient, and Rule made for Judgment unless the Tenant, &c. shall appear. *Davy* for Plaintiff.
N. B. The Chief Justice was not in Court.

Boman against Noright. Trin. 31 Geo. 2.

IN Ejectment for ancient Demesne Land, within the Manor of *Godmanchester*, County *Huntingdon*, Rule absolute to stay Proceedings in this Court; ancient Demesne has always been held a good Plea in Ejectment. Plaintiff had at first brought an Ejectment in *Godmanchester* Court, but dropped it, and then brought the present Ejectment in this Court.

Error.

Trinity 18 & 19 Geo. 2.

AFTER an Award of Execution against Bail on a Recognizance in Error, they brought a Writ of Error as to such Award of Execution. Plaintiff moved for Leave to take out Execution for Want of Bail on the Writ of Error brought by the Bail;

and obtained a Rule to shew Cause; which was discharged; no Bail in this Case being required. *Prime* for Defendant; *Eys* for Plaintiff.

Stone against Rawlinson, in Error. Mich. 19 Geo. 2.

RULE to shew Cause why *Nonpros* of a Writ of Error, for Want of transcribing the Record, should not be set aside with Costs. Objected, That no final Judgment is entered, and therefore no Transcript could be made. The *Nonpros* set aside, without Costs. It appeared that the Clerk of the Judgments was paid his Fee, by Plaintiff's Attorney, for entering the final Judgment, which he had neglected to do; but Plaintiff did not pray any Rule against him. *Prime* for Plaintiff; *Skinner* and *Agar* for Defendant.

Evidence.

Parrot against Benn. Mich. 8 Geo. 2.

THE Court held, that a Condemnation upon a Foreign Attachment in *London*, which appeared on the Record to be subsequent to this Action brought, could not be given in Evidence against Plaintiff at the Trial.

Smith against Richardson. Mich. 11 Geo. 2.

THIS was an Action for scandalous Words, importing that Plaintiff was a Thief, and had robb'd Defendant of his Beer. Plaintiff was Beer Butler of a College at *Oxford*, and laid Special Damage. Defendant, at the Trial, offered to prove the Truth of the Words in Mitigation of Damages: And Mr. Baron *Fortescue*, who tried the Cause, refused to admit such Evidence, but reserved the Point. The twelve Judges met, and eight were of Opinion, that where the Words amount to Treason or Felony, Defendant,

on the General Issue, ought not to be admitted to prove the Truth of the Words; and the *Posse* was ordered to be delivered to Plaintiff.

Vide Title Trials, &c.

Executions, Execution of Process, &c.

Warwick *against* Figg. Mich. 6 Geo. 2.

EXECUTION was taken out after a Writ of Error allowed, and Bail put in thereupon: And the Question was, Whether such Execution was regularly issued or not? It was urged for Plaintiff, that the Writ of Error being returnable *tres Trin'* was spent before the final Judgment signed, which was not 'till the 30th of *June* after the End of *Trinity* Term, and that therefore the Execution was regular. On the other Side it was alledged, That by the Writ of Error the Record was transcribed into the *King's Bench*; that the Writ of Error was not spent; that the final Judgment signed in *Trinity* Vacation relates to the first Day of *Trinity* Term, and that therefore the Writ of Error is a *Superfedeas* to it, and the Execution in Question bears Test the last Day of *Trinity* Term: If Plaintiff had stayed 'till *Michaelmas* Term following before he had signed final Judgment, as in the Case of *Joy* and *Fanshaw*, he might have had some Colour to take out Execution (though that is a Practice not to be encouraged); the Court were of that Opinion, and ordered the Execution to be set aside, and Restitution and Costs; and ordered an Attachment *Nisi*, against *Wreathocke*, Plaintiff's Attorney, to stand over him 'till he sees Restitution made, and Costs paid.

Oates *against* Forest.

Judgment was obtained in *Com' Midd'*, and a *Fi. Fa.* issued in that County, and returned *Nulla bona*; and thereupon a *Fi. Fa.* was issued in *London*, but was not made a *Tenat' Fi. Fa.* And the Court

Court being moved to set aside the *Fi. Fa.* in *London*, for want of its being made a *Testat'*, refused so to do, being of Opinion that the Award of the *Testat' Fi. Fa.* upon the Roll was sufficient to warrant a *Fi. Fa.* into *London*, and that it need not be made a *Testatum*.

Sympson *against* Gray and his Wife, and another. Hil.
6 Geo. 2.

JUDgment of *Michaelmas* Term 1731, signed *Nov. 13. Fi. Fa.* bore Test *November 28* in *Michaelmas* Term following. Defendant moved to set aside the *Fi. Fa.* as irregular, the Judgment not being revived by *Sci. Fa.* and the *Fi. Fa.* not being issued within the Year: Plaintiff insisted that the *Fi. Fa.* being issued within the fourth Term from the Time of signing Judgment, it was regular, and produced an Affidavit that Execution had been some Time staid by an Injunction out of *Chancery*. Court held the Injunction to be quite out of the Case, and that the Year is to be computed from the Day of signing Judgment, and therefore set aside the *Fi. Fa.*

Cooke *against* Horrock. East. 6 Geo. 2.

A Motion was made to set aside an Execution issued after a Writ of Error allowed, and Notice thereof given to Plaintiff's Attorney: It appeared that an interlocutory Judgment was signed, and a Writ of Inquiry executed in *Michaelmas* Term last, and a Writ of Error was then allowed, and Notice given; but the final Judgment was not signed 'till after the Beginning of *Hilary* Term last. The Court held the Execution to be regular, the interlocutory Judgment not being removable by the Writ of Error; and the final Judgment being signed of a subsequent Term, was not removed, and therefore refused to make any Rule,

Dakeyne against Thornhill.

A Question arose, Whether the Plaintiff could levy Poundage and other necessary Charges, besides the Costs taxed, out of a Penalty? And the Court held he might; if the Defendant should think himself aggrieved, the Court, upon Application would refer the Matter to the Prothonotary, to inquire whether the Plaintiff hath levied more than he ought to have done, or not.

White against Morgan.

A Writ of Error was brought, returnable on the Essoign-Day of *Hilary* Term; the final Judgment was signed of the same Term, 16th of *January*; and Plaintiff took out Execution, apprehending the Judgment not to be removed by the Writ of Error. *Chapple* moved to set aside the Execution, and insisted that the Judgment relates to the Essoign-Day, and is a Judgment from that Day; and the Court will not make a Fraction of the Day, so consequently the Record is removed by the Writ of Error. *Hawkins*, for Plaintiff, insisted that the Judgment must be given before the Return of the Writ of Error; and if given upon the Return-Day of the Writ of Error, is not removed by that Writ. The Court held the Record well removed, and set aside the Execution, with Costs: By Consent no Action to be brought.

Snape and others, Assignees, against Hancock. Trin.
6 & 7 Geo. 2.

PER *Cur'*: Plaintiff cannot sue out *Ca. Sa.* and *Fi. Fa.* against Defendant at the same time, and take out the Sheriff's Warrants thereon: This was not the main Question, but was incidentally said. *Per Cur'*: Plaintiff, in this Case, had executed both *Ca. Sa.* and *Fi. Fa.* and both were set aside as irregular.

Gale *against* Hooker. Hil. 7 Geo. 2.

A Writ of false Judgment was delivered to the Under-Sheriff; but no Money was tendered or paid for the Return; for want whereof the Sheriff took no Notice of it, and executed a Writ *de Executione Judicii*. Upon hearing Counsel on both Sides, the Sheriff's Proceeding was held to be regular. *Per Cur'*: The Defendant, if he thinks fit, may still proceed upon his Writ of False Judgment. *Glyde* for Defendant; *Chapple* for Plaintiff.

Hann *against* Capell.

A Motion was made to have Rent paid to the Landlord out of the Money levied in Execution in this Cause. It appeared, upon shewing Cause, that the Sheriff's Warrant on the Execution, after it was sealed, had been altered, and a new Bailiff's Name inserted. *Per Cur'*: The Warrant being altered, no Goods are taken in Execution thereby; but let the Bailiff and the Attorney, who were privy to the Alteration, shew Cause why an Attachment should not be issued against them. *Belfield* for the Sheriff; *Skinner* for the Landlord.

Dutton *against* Pitt, Esq; East. 7 Geo. 2.

THE Defendant being brought up by *Habeas Corpus* from the *King's Bench* Prison, in order to be charged in Execution at the Plaintiff's Suit: Moved by *Darnal* to be remanded, upon an Affidavit that he was a Member of the last Parliament, and continued so to the End of the Sessions; it appearing by the Return of the *Habeas Corpus*, that the Defendant was taken by Process out of the Court of *King's Bench* since the End of the last Session of Parliament, and was not charged with any Process here, the Court did not think it proper that he should be charged in Execution upon the Judgment, but remanded him in order that he might move the Court of *King's Bench* to be discharged from the Actions there; because if the first taking and Detainer were illegal, he ought not to be charged in Execution here.

Patrick *against* Pettis.

THE Question was, Whether the Landlord's Rent should be paid out of the Monies levied in Execution upon the Defendant's Goods, who was a Bankrupt; and thereupon another Question arose, Whether or no, if the Defendant was a Bankrupt before the Levy, the Goods were liable to Payment of the Rent. The Court thought it a proper Matter to be determined by a Jury, whether the Defendant was a Bankrupt, or not, at the Time of the Levy, and directed an Issue to be tried accordingly. *Wright* for the Landlord; *Baynes* for the Assignees.

Pigot *against* Charlewood. Trin. 7 & 8 Geo. 2.

DEfendant taken in Execution when he was attending the Execution of a Writ of Enquiry as Attorney for his Client, moved to be discharged. *Umlin* shewed Cause. *Cur'* discharged him.

Maule *against* Grubb.

FORREST having attended Prothonotary to tax Costs for not proceeding to Trial, on his Return home was arrested on a *Ca. Sa.* out of the *King's Bench*. *Cur'* said they could not discharge him from the *King's Bench* Process; but on producing an Affidavit of Notice, ordered the Officer and Plaintiff to shew Cause why they arrested him, and why the Goods pledged with them for his Enlargement should not be restored. *Camyns* for *Forrest*; on shewing Cause, it appeared that the Goods were sold voluntarily by *Forrest* to the Plaintiff. Rule discharged. *Birch* for Plaintiff.

Bond *against* Jacob and others. Trin. 8 & 9 Geo. 2.

CHAPPLE moved to set aside a Writ of *Testatum Fieri Facias* issued immediately after Judgment, and before a *Fi. Fa.* returned and filed to warrant it; and the Court made a Rule to shew

shew Cause. *Eyre* for Plaintiff shewed Cause, and produced a *Pi. Fa.* returned in the proper County; and thereupon the Rule was discharged.

Cramborne against Quennel. Hil. 9 Geo. 2.

PLAINTIFF moved to be at Liberty to take out Execution, the Writ of Error brought by Defendant being become ineffectual by the Death of the late Lord Chief Justice of this Court. *Per Cur'*: Let Defendant shew Cause. There were several other Motions of the same Kind this Term; and it was held by the Court, that where the Writ of Error is not returned by the Chief Justice, it becomes ineffectual; but Plaintiff cannot take out Execution without Leave of the Court. 1 *Syd.* 168. *Allen against Shaw.*

Olorenshaw against Stanyforth.

HELD, upon hearing Counsel on both Sides, that the Writ of Error not being returned, and signed by the Chief Justice, becomes ineffectual by his Death; and the Rule to shew Cause why Plaintiff should not have Leave to take out Execution was made absolute. *Dyer* 173. *Wright* for Plaintiff; *Birch* for Defendant.

Hayes against Thornton.

THE Writ of Error being become ineffectual by the Death of the Chief Justice, the Return not being signed by him, and consequently the Record not removed, Plaintiff took out Execution without Leave of the Court, which was held to be irregular: The Court must be moved for Leave before Execution can regularly be taken out. *Gigger's Case.* *Salk.* 264. *Brown against Randall,* Hil. 1 Geo. 1.

Humphreys *against* Daniel. Easter 9 Geo. 2.

PLainriff recovered Judgment; Defendant brought a Writ of Error, and pending that Writ Plaintiff brought an Action of Debt on the Judgment, and after Judgment therein levied Execution: And the Question was, Whether Plaintiff could do this without Leave of the Court. *Per Cur'*: Defendant might have moved the Court to stay Proceedings in the Action on the Judgment, pending the Writ of Error, which is always granted; but having made no such Application Plaintiff is regular. *Corbet* for Defendant; *Chapple* for Plaintiff.

Fisher *against* Carruthers, Bail for D.

PLainriff having recovered Judgment in the Original Action for 26 *l.* levied 13 *l.* on the Goods of Defendant, one of the Bail, with Intent to levy the remaining 13 *l.* on the Goods of B. the other Bail; but the Effects of B. amounting to no more than 6 *l.* Plaintiff had Resort back again to the Goods of Defendant, and by a second Execution levied 7 *l.* more, being the Residue of the 26 *l.* recovered. This was held to be irregular. Plaintiff cannot levy by Parcels without Defendant's Request and Consent; he might have levied the whole upon Defendant at first (who it appeared had then Goods sufficient to answer.) The Rule to shew Cause why the second *Fi. Fa.* against Defendant should not be set aside, and Restitution, was made absolute. *Wynne* for Defendant; *Belfield* for Plaintiff.

Mason *against* Simmonds and Eleven others.

JOINT Action against several Defendants; Damages 20 *l.* against Four of them on Trial, and 5 *s.* against one Defendant who had let Judgment go by Default. Writ of Error brought by the Four in the Name of the one who was not obliged to find Bail because it was by Default. Motion by *Agar* for Leave to take out Execution against the Four, notwithstanding such Writ of Error: *Cur'*: Shew Cause. Rule made absolute *Trinity* next on Affidavit of Service.

Richard

Richard *against* Davis. Trin. 11 & 12 Geo. 2.

MOTION by *Skinner* to set aside Execution upon a Judgment in this Court; on which Judgment an Action of Debt was brought in the Mayor's Court of the City of *Worcester*, and Defendant was arrested in the said Mayor's Court, and afterwards Plaintiff took out Execution in this Court. Rule to shew Cause why Plaintiff should not make his Election.

Berriman *against* Gilbert and his Wife. Easter 12 Geo. 2.

THE Debt was contracted by the Woman while sole, and Plaintiff having recovered Judgment, both Husband and Wife were taken in Execution. *Eyre* moved to discharge the Wife, and cited *Miles against Williams*, Trin. 12 Ann. in B. R. where it was said *arguendo*, though it was not the Point in Question, that the Wife cannot be taken in Execution; but the Court held otherwise, and discharged the Rule. On Mesne Process the Woman might perhaps have been discharged on a common Appearance; but no Instance can be shewn where she has been discharged from an Execution. *Wright* for Plaintiff.

Robinson *against* Tuckwell. Mich. 13 Geo. 2.

THE same Case as *Humphreys against Daniel*, Easter 9 Geo. 2. and the same Determination. *Eyre* for Defendant; *Wright* for Plaintiff.

Clarkson *against* Physick.

AFTER Judgment in an Action of Debt on a former Judgment, and *Ca. Sa.* delivered to the Sheriff, Defendant moved to stay Execution pending a Writ of Error brought to reverse the former Judgment. Shew Cause. *Per Cur'*: The Motion comes

too late ; it ought to be before Judgment in the later Action. Rule discharged. *Comyns* for Defendant ; *Eyre* for Plaintiff,

Bevan against Jones. Trinity 13 & 14 Geo. 2.

THE Court were of Opinion, That after Execution executed, though the Judgment be for a Penalty, they have not Jurisdiction at Common Law, or by Statute, to refer to the Prothonotary to examine into the Sum due for Principal, Interest and Costs, and into the *Quantum* levied, and to order Restitution of the Overplus, without Consent, but Defendant must seek Relief in a Court of Equity. Rule to shew Cause discharged. *Belfield* for Defendant ; *Birch* for Plaintiff,

Calcraft against Swann. Hil. 14 Geo. 2.

DEFENDANT became a Bankrupt, and after his Certificate allowed, his Goods were taken in Execution. Defendant obtained a Rule on the Statute 5 Geo. 2. *sess.* 7 & 20. to shew Cause why the *Fi. fa.* should not be set aside, and Restitution. *Per Cur'* : We are not required by the Statute to proceed in a Summary Way, as to the Goods of a Bankrupt, though as to his Person we are. If the Defendant did not obtain his Certificate in Time, so as to plead it, he may bring an *Audita Querula*. The Rule was discharged, *Willes* for Plaintiff ; *Skinner* for Defendant.

Pickering against Landon. Easter 14 Geo. 2.

JUDGMENT was entered in 1736, in *Cooke's* Office ; in 1739 two *Scire facias's* in *Borrett's* Office were returned *Nichil*, and the Judgment being revived, a *Fi. fa.* and afterwards a *Venditioni exponas* issued out of *Borrett's* Office ; after the Execution whereof, and an Action tried against the Sheriff of *Northamptonshire*, for a false Return on the *Venditioni exponas*, Defendant moved, and had a Rule to shew Cause why the Writs of *Fi. fa.* and *Venditioni exponas* should not be set aside ; insisting, that they were irregular, and ought to have been in *Cooke's* Office. It was urged for Plaintiff, that a *Sci. fa.* is as much a new Suit as an Action of Debt, and is

not

not confined to the Office where the Judgment is entered, but may be brought in any other. *Per Cur'*: By an old Rule of this Court in 1654, the whole Proceedings after Appearance ought to be in one and the same Office; a *Sci. fa.* is not a new Action, but a Continuance of the same Suit, and the *Fi. fa.* and *Venditioni exponas* are irregular; but the Application to set them aside ought to be made in due Time. The *Fi. fa.* issued so long ago as 1739, it is not reasonable, after what has passed, for the Court to interpose now. The Rule was discharged. *Prime and Draper* for Plaintiff; *Skinner and Willes* for Defendant.

Meriton against Stevens. Mich. 15 Geo. 2.

Judgment was signed 28th *October*, and 29th *October*, between five and six in the Evening, the Sheriff took Possession of Defendant's Goods, by Virtue of a *Fi. fa.* Defendant moved to set aside the *Fi. fa.* a Writ of Error having passed the Great Seal in the Morning of the 29th; but it was not pretended to have been allowed by the Clerk of the Errors before the *Fi. fa.* executed. And the Question was, From what Time the Writ of Error is to be deemed a *Superfedeas*? The Court, after Consideration, determined, That it is not a *Superfedeas* from the Sealing, but from the Delivery to the Clerk of the Errors, according to a Rule of this Court, *Mich. 28 Car. 2.* *Wynne* for Defendant; *Skinner and Draper* for Plaintiff. This was the Point determined, whereupon the Parties entered into an equitable Rule by Consent.

Thompson against Bristow. Mich. 16 Geo. 2.

Judgment was entered 11th & 12th, revived in *Easter Term* 13th *Geo. 2.* and Defendant was taken in Execution in *July* 1741, and was then discharged by Plaintiff's Consent; and a written Agreement was entered into by the Parties, that the Judgment should stand revived for twelve Months. After more than a Year from the last *Ca. fa.* Plaintiff caused Defendant to be again taken in Execution, without Continuance on the Roll; replying upon the written Agreement. The Court held the Agreement to be null and void; and made the Rule absolute to set aside the last *Ca. fa.* and discharge Defendant

Defendant out of Custody. *Skinner* and *Agar* for Defendant; *Willes* for Plaintiff.

Ashdowne against Fisher. Trinity 16 & 17 Geo. 2.

DEFENDANT rendered in Discharge of Bail, and his Person was discharged out of Execution by the Court as a Bankrupt, pursuant to the Statute. His Goods were afterwards taken by a *Fi. fa.* and he applied to have them released, and obtained a Rule to shew Cause, which was discharged. The Court held that the Goods may be taken; there is no Clause in the Statute which extends to the Goods. *Skinner* for Plaintiff; *Boyle* for Defendant.

Eaton against Southby.

AFTER the Record removed into the *King's Bench* by Writ of Error, Defendant died; Plaintiff moved for Leave to sue out of this Court a *Sci. fa.* against Defendant's Executors, and obtained a Rule to shew Cause; which was discharged. The Record being removed out of this Court, the Motion is improper here. *Boyle* for Plaintiff; *Beafield* for Defendant.

Martin against Ridge.

DEFENDANT obtained a *Superfedeas* for Want of a Declaration, in an Action of Debt on Judgment, and was afterwards taken in Execution by a *Capias ad. Satisfac'* issued after a Year and Day from the Time of the Judgment, without any *Sci. fa.* to revive. Defendant brought his Action for false Imprisonment, and Plaintiff justified under the *Ca. fa.* Defendant now applied to set aside the *Ca. fa.* and it appearing that a *Ca. ad respond'* only, and not a *Ca. fa.* had issued within the Year, there was nothing to warrant the Continuance of a *Ca. fa.* on the Roll. And the Rule was made absolute to set aside the *Ca. fa.* *Draper* for Plaintiff; *Beafield* for Defendant.

Rownson and his Wife *against* Williamson. Mich.
17 Geo. 2.

ACTION brought for the Labour of Plaintiff's Wife, done for Defendant during Coverture. Plaintiffs failed in the Action, and the Wife only, without the Husband, was taken in Execution by *Ca. fa.* for Costs. The Court held, That as the Demand did not accrue to the Wife *dum sola*, she was wrongfully joined a Party in the Action; and that the Wife, who, by Law, is supposed to have nothing whereout to make Satisfaction, ought not to be detained in Execution. The Rule to discharge the Wife was made absolute. If, in such Case, the Wife could be detained, a run-away Husband would have it in his Power to procure his Wife to be imprisoned. *Bootle* for the Wife; *Prime* for the Defendant.

Pickering and his Wife *against* Thomson, Bail for
Miller. Hilary 17 Geo. 2.

Judgment in *Middlesex* against the Principal, *Sci. fa.* against the Bail in *Middlesex*, and Award of Execution, *Fi. fa.* in *Middlesex*, and nothing levied; *post ann' & diem* two *Scire facias's* to revive the Award of Execution returned *Nichil* in *London*, and *Fi. fa.* thereon in *London*, and Levy there. Rule absolute to set aside the *Fi. fa.* in *London*, and for Restitution. *Sci. fa.* to revive a Judgment, or Award of Execution, must be in that County where Judgment is recovered, or Execution awarded. *Sci. fa.* against Bail may be in *Middlesex* (Record of the Recognizance being at *Westminster*) or in the County where the Caption of the Recognizance appears to be on Record, if in any other County except *Middlesex*. *Hayward* for Defendant; *Agur* for Plaintiff.

Farfide, on the Demise of Lord Sidney Beauclerk and others, *against* Hayley. Trinity 17 & 18 Geo. 2.

AFTER a Verdict for Plaintiff, Motion for Leave to take out Execution on the Judgment against the Casual Ejector, *non obstante* a Writ of Error brought by Defendant *Hayley*, the Rule to shew Cause was discharged. *Per Cur'*: In Cases where the Landlord is permitted to defend without the Tenant, the Reason of Judgment against the Casual Ejector, *per Statute*, is, that under it, after an End of the Suit Plaintiff may obtain Possession of the Premises sued for, which he could not do by Virtue of a Judgment against a Person out of Possession. But where a Writ of Error is brought, there is not the least Reason to give Plaintiff Leave to take Possession till after a Determination in Error. *Skinner* for Plaintiff; *Willes* for Defendant.

Burdus against Satchwell. Hil. 18 Geo. 2.

AFTER a Writ of Error allowed, Plaintiff brought Action on Judgment, and Bail was justified. Afterwards the Writ of Error was nonprossed for want of transcribing the Record: Plaintiff, without discontinuing his Action on the Judgment, took Defendant's Goods in Execution by *Testat. Fi. fa.* which was held irregular, and the *Testat. Fi. fa.* set aside, and the Goods ordered to be restored, with Costs. Plaintiff will be at Liberty to take out Execution after discontinuing his Action on Judgment. *Skinner* and *Dra-per* for Plaintiff in Error; *Willes* and *Prime* for Defendant in Error. *Obiter per Cur'*: No Rule to transcribe ought to be given till the Record is brought in. In Case of a *Testat. Fi. fa.* the Court will not go into a nice Enquiry when the *Fi. fa.* in the Original County to warrant the *Testat.* was sued out; it is sufficient if the first *Fi. fa.* returned be produced.

Sykes, on the Demise of Oates and others, *against*
Dawson, in Ejectment. Hilary 18 Geo. 2.

DAWSON, the Landlord, was made Defendant by Rule, the Tenant in Possession not appearing. After Verdict for Plaintiff, Defendant the Landlord brought a Writ of Error, and served Plaintiff's Attorney with a Rule to be present at taxing Costs. Plaintiff signed no Judgment on the Verdict, but moved the Court, producing the *Posse*, and obtained a Rule of Course for Leave to take out Execution against the Casual Ejector. Defendant perceiving this allowed and served Notice of his Writ of Error, and moved to stay Proceedings on the Judgment. *Per Cur*: The Writ of Error is no *Superfedeas* before delivered to the Clerk of the Errors to be allowed. *Vide Meriton against Stephens, Mich. 15 Geo. 2.* where, so far as Execution had gone, it stood, and further Proceedings only were stayed. In this Case the Writ of *Habere fac' possession'* was executed. No Rule. *Wynne and Bootle* for Defendant.

Smith and his Wife *against* Phripp, one, &c. Mich.
20 Geo. 2.

JUDGMENT was obtained in *Middlesex*, and Defendant was taken 8th May last by a *Testat. Ca. sa.* out of *Middlesex* into *Somersetshire*. Objected, That no *Ca. sa.* in *Middlesex* was returned to warrant the *Testat'*, as appeared *per Search* in *Easter* and *Trinity* Terms last; but after the Search a *Ca. sa.* in *Middlesex* was returned, and entered in the Sheriff's Books. The Court declared, that had the Application been recent, they must *ex Debito Justitiæ* have taken Notice of it; but as Defendant had so long acquiesced, and as possibly an Action for an Escape might have been brought against the Sheriff of *Somersetshire*, the Rule to shew Cause why the *Testat. Ca. sa.* should not be set aside, was discharged. *Belfeld* for Defendant; *Willes* for Plaintiff.

Turner *against* Cowper. Hilary 20 Geo. 2.

AFTER a Rule by Consent to refer it to the Prothonotary, to inquire into the *Quantum* of the Debt and Value of Goods levied, and before Prothonotary had made his Report, Plaintiff died. Upon the Application of Plaintiff's Executor, who offered to stand in Plaintiff's Place, he was made a Party to the Rule; and the Prothonotary was directed to proceed, without the Consent of Defendant to this Rule. *Prime* and *Draper* for Plaintiff's Executor; *Skinner* and *Willes* for Defendant.

Low *against* Beart. Easter 20 Geo. 2.

RULE to shew Cause why *Fi. fa.* should not be set aside, the Judgment being above a Year old, and not revived by *Sci. fa.* nor any Continuances of *Fi. fa.* entered on Record; Plaintiff, before Cause shewn, entered the Continuances, and produced intervening Writs of *Fi. fa.* to warrant the same. Rule discharged *sans* Costs. *Elegit* may be continued before suing out the Writ, *Fi. fa.* or *Ca. fa.* cannot be continued without suing out the Writ. *Prime* for Plaintiff; *Draper* for Defendant.

Stanynought, one, &c. *against* and seven others. Mich. 21 Geo. 2.

AFTER Judgment in a Joint Action against all the Defendants, Plaintiff sued out a *Fieri facias* against the Goods of , one of the Defendants, only. Motion *per Leeds*, for Defendant to set aside the *Fieri facias*, and for Restitution. *Skinner* and *Draper*, for Plaintiff, prayed to amend the *Fieri facias* by the Judgment, and quoted *Browne* against *Hammond*, Easter 12 Geo. 2. The Parties came into Terms of Agreement between themselves, without any Determination by the Court; and, by Consent the Rule was made absolute, with Costs.

De Revoſe, Executor, *againſt* Hayman.

Defendant having brought a Writ of Error, and put in Bail thereon ſoon after, was laſt Term ſerved with a Rule for better Bail, and thereon gave Notice to juſtify at a Judge's Chamber, but did not. The Bail not being juſtified within four Days, Plaintiff took a Certificate thereof from the Clerk of the Errors, and ſued out a *Ca. ſa.* which was held to be regular. Defendant has not Time of Courſe to perfect his Bail till the Term next following, where the Rule is ſerved in Vacation, but ought to juſtify before a Judge; and if Plaintiff be not ſatisfied with that, then Defendant, having done every Thing in his Power, is intitled to Time till the next Term, but not otherwiſe. *Poole* for Defendant; *Skinner* for Plaintiff.

Sweetapple *againſt* Atterbury. Trin. 22 & 23 Geo. 2.

Plaintiff having obtained Judgment in *Middleſex*, ſued out in the firſt Inſtance a *Teſtat. Fi. ſa.* into *Warwickſhire*, and took Defendant's Goods in Execution. Defendant moved to ſet aſide the *Teſte. Fi. ſa.* for Want of a *Fi. ſa.* returned *Nulla Bona* in *Middleſex* to warrant it. Plaintiff, after the *Teſtat. Fi. ſa.* executed as aforeſaid, and Notice of Motion, but before the Motion made, got a *Fi. ſa.* in *Middleſex* returned; which the Court held ſufficient, and diſcharged the Rule to ſhew Cauſe. *Wynne* for Defendant; *Draper* for Plaintiff.

Weſt and his Wife *againſt* Hedges. Hilary 24 Geo. 2.

A Bill of Sale held to be a Removal of Goods taken by a *Fi. ſa.* and a Year's Rent ordered to be paid the Landlord out of the Money levied by the Sheriffs of *London*. *Draper* for Stere the Landlord; *Prime* for Plaintiff.

Inclendon *against* Clarke, in Error. Easter 25 Geo. 2.

AFTER Writ of Error allowed, and Notice thereof given, Plaintiff in the Judgment executed a *Fi. fa.* for Want of Bail within four Days; Defendant moved to set aside the *Fi. fa.* suggesting that Plaintiff could not regularly take out Execution, till after a Certificate from the Clerk of the Errors that no Bail was put in. The Court discharged the Rule. Such Certificates have been frequently taken out of Caution, but are not essentially necessary. The Statute 16 & 17 Car. 2. is positive as to Bail within four Days. *Vide* General Rules, *Trinity & Mich.* 28 Car. 2. No Bail is yet put in; Bail ought to have been put in before the Motion. A Question arose, Whether after Bail perfected the Goods can be restored? *Vide* Meriton *against* Stevens, *Mich.* 16 Geo. 2. Sykes *against* Dawson, *Hil.* 18 Geo. 2. Held, that if Defendant's Person be taken by a *Ca. fa.* and Bail in Error afterwards perfected, the Person shall be discharged; but in Case of a *Fi. fa.* the Proceedings, so far as the Sheriff hath gone, must stand. *Draper* for Plaintiff; *Willes* for Defendant.

Betts on the Demise of Robson *against* Egerton, in Ejectment. *Hil.* 28 Geo. 2.

LEWIS Manson Watson, Esquire, Defendant's Landlord. Rule to shew Cause why Writ of *Hab. fac. Poss.* should not be set aside, and Possession restored, &c. Plaintiff obtained a Verdict at the Summer Assizes in *Kent* 1st July 1754. Defendant brought a Writ of Error, which was allowed 29 Oct. but entered into no Recognizance, nor put in any Bail thereon, Plaintiff not having got Costs taxed on the final Judgment, (without which the Measure or Quantum of the Recognizance could not be fixed) Plaintiff for want of the Recognizance required by the Statute, or Bail within four Days, took out a Writ of *Hab. fac. Poss.* and by virtue thereof, on 4th November took Possession of the Premises late in Question, which the Court held to be regular. Defendant should have applied to stay Execution, and then the Court would have obliged Plaintiff to have procured his Costs to be taxed; the Writ of Error is no
Superseas

Superfedeas without Bail. A Judge would have taken Bail if applied to. The Rule discharged. Vide *Stat. 16 & 17 Cha. 2. c. 8. 2 Vent. 170. Sikes on Demise of Oates and others against Dawson. Hil. 18 Geo. 2. Prime and Wynne for Plaintiff; Willes and Poole for Defendant.*

Furtado *against* Miller, one, &c. By Bill. Trin. 30 & 31 Geo. 2.

RULE absolute to quash the Writ of *Fi. fa.* returnable on the Morrow of the *Holy Trinity*, (a general Return) instead of a Day certain, as it ought to have been without Costs, and Defendant to bring no Action, Vide *Fulwood's Case*, 3d Report. *Davy* for Defendant; *Prime* for Plaintiff.

Coppendale *against* Debonaire.

AFTER a *Fi. fa.* executed, and thereby Part of the Debt and Costs levied, Plaintiff before the Return of said *Fi. fa.* irregularly sued out a *Testat. Fi. fa.* and under it levied the Residue, Rule absolute to set aside the *Testat. Fi. fa.* and for Restitution and Costs. By consent Defendant to bring no Action. *Stansford* for Defendant; *Hewitt* for Plaintiff.

Blayer *against* Baldwin. Trin. 31 Geo. 2.

Defendant having been arrested by a *Ca. fa.* on an old Judgment obtained in *Trinity Term* 1756, without any Revival of the Judgment, applied to the Court, and obtained a Rule to shew Cause why the *Ca. fa.* should not be set aside as irregular, on shewing Cause Plaintiff produced a Roll whereon Continuances were entered of a *Fi. fa.* sued out within the Year, viz. in *April* 1757, by *Vicecomes non misit Breve*, and *Ca. fa.* awarded thereon; but the first *Fi. fa.* nor any other appearing to be returned by the Sheriff, the Continuances entered as aforesaid were deemed insufficient to support the *Ca. fa.* on this old Judgment not revived by *Sci. fa.* and the Rule was made absolute to set aside the *Ca. fa.* and for a *Superfedeas* to discharge Defendant with Costs. *Poole* for Defendant; *Prime* and *Davy* for Plaintiff.

Staple *against* Bird. Trin. 32 & 33 Geo. 2.

Defendant being arrested by a *Capias ad satisfaciend.* 7th May 1759, paid to the Sheriff of *Kent's* Bailiff, 30*l.* 6*s.* 6*d.* the Sum mentioned in the Writ, which Sum the Bailiff immediately sent to the Under Sheriff in *London*, on 10th of same *May*, Mr. *Elibu Brideoak* Plaintiff's Attorney, (to whom the Judgment whereon said *Ca. fa.* was issued had been assigned by Plaintiff) demanded said Money of the Under Sheriff, who excused himself, the *Ca. fa.* not being then returnable. At the Return the Sheriff returned, that he took Defendant who paid into his Hands said 30*l.* 6*s.* 6*d.* and that afterwards, and before the Return, to wit, 11th same *May*, a *Fi. fa.* against the Goods of *Staple*, the Plaintiff in the *Ca. fa.* ats. *Bird* Executor, &c. the Defendant in the *Ca. fa.* for 29*l.* 10*s.* was delivered to the Sheriff, and that he levied the same out of the Money in his Hands, which with Poundage exceeds the Money received under the *Ca. fa.* Upon this Return, and an Affidavit of the Fact, *Brideoak* applied to the Court, and obtained a Rule for the Sheriff to shew Cause why he should not pay him said 30*l.* 6*s.* 6*d.* deducting Poundage, which Rule was made absolute upon hearing Counsel on both Sides, *Nares* for *Brideoak*; *Wynne* for *Buffar*, Esq; Sheriff of *Kent*.

Fine.

Harneis *against* Micklethwaite and his Wife. Mich. 6 Geo. 2.

THE Fine was stopped at the King's Silver Office by *Caveat* entered by Order of Mr. Justice *Price*, upon an Affidavit of the Death of the married Woman, one of the Cognizors, and Application was made to the Court that the Fine might pass, notwithstanding such *Caveat*. It appeared that the Wife died the Day after the Caption, and after the *Teste*, but before the Return of the Writ of Covenant. It was insisted that the King's Silver was not paid before the Death of the Wife, and therefore the Fine ought not to pass.

pass. On the other Side it was urged, that Fines are common Assurances, and the Acknowledgment makes the Fine compleat, that the King's Silver is the Fine *pro licentia alienandæ*, which is the Pre-fine paid at the Alienation-Office, and for which a Receipt was indorsed on the Writ of Covenant, and is not Part of the Post-fine, which is never collected till after the Fine be compleated; and the Court after Consideration were of that Opinion, and ordered the Fine to pass.

Cotton *and* Tyrrell, Bar. Quer'; and Baylie *and* Ryder, Deforc'.

THE Fine was stopped at the King's Silver Office for want of an Affidavit that the Parties were living, a Year having lapsed since the Caption thereof; and *Ryder*, one of the Conuzors, being dead, Application was made to the Judges in the Treasury that he might be struck out, and that the Fine might pass as to *Baylie*, the other Conuzor. The Judges denied that Motion, but made a Rule that *Baylie*, the surviving Conuzor, should shew Cause why the Fine should not pass (generally as to all Parties); and upon Affidavit of Service the Rule was made absolute.

Between Gregory, Conuzee, *and* Croucher and others, Conuzors. Mich. 7 Geo. 2.

A Fine between the said Parties was stopped at the King's Silver Office for want of the usual Affidavit, a Year being lapsed since the Date of the Caption. The Court upon inspecting the Writ of Covenant and Conuzance made a Rule upon the Clerk of the King's Silver Office, to shew Cause why the Fine should not pass; and upon hearing Counsel for the Conuzee and the Clerk of the said Office, and it appearing that all the Parties were alive at the Time when the King's Silver was paid, the Fine was ordered to pass. It was said *per Cur'*, That all the Affidavits which ought to be required at the King's Silver Office should be, that the Parties were alive at the Time the King's Silver was paid, which is the Pre-fine.

Dean and Tidmarsh. Easter 8 Geo. 2.

A Fine acknowledged in *South Carolina* sworn to before the Chief Justice, there to be duly acknowledged and attested by a Notary Publick. By Judges in the Treasury, It cannot pass without Oath of the due Acknowledgment before one of the Justices of this Court.

Forster *against* Pollington and Wife, and others. The same and another *against* Brooke and Wife.

TWO Fines of Lands in the Island of *Antegoa* were ordered to be amended upon hearing Counsel for the Conuzee and the Heirs at Law of the Conuzors, who had brought Writs of Error to reverse the Fines; the Lands were described in the Writs, &c. in *Insula de Antegoa in America in Partibus transmarinis, viz. in Parochia Sanctæ Mariæ Illington in Com' Midd'*. The Amendment was by striking out the Words in *America in Partibus transmarinis*. Articles of Agreement between the Parties to the Fines to convey and assure Lands in the Island of *Antegoa* were read; and *per Cur'* the Repugnancy inserted merely through want of Skill, and which would vitiate the Fines, must be rejected, and the Fines made effectual, that is, in common Form; if they be then insufficient, Advantage may be taken thereof. *Chapple* for the Conuzee; *Eyre* and *Wright* for the Heirs at Law.

Lazenby and Knight.

THE Chirographer refused to make out the Indentures of this Fine which was double, a Fine *sur Cognizance de Droit come ceo*, &c. and a Fine *sur concessit* in one and the same Concord; and upon Motion that the Fine might pass, it was urged by *Wright*, that a Fine is a real Agreement, and ought to be considered in the Nature of a Conveyance, and the Party may have it in what Manner he pleases at his Peril; but *per Cur'*, this Sort of double Fine is unprecedented. If the Plaintiff will be satisfied to let that Part of the Fine which is *sur concessit* be struck out, and that the Fine do pass

pass as a Fine *sur Cognizance de Droit come ceo*, &c. only, he shall have a Rule for that Purpose; to which *Wright* agreed.

Lombe against Lombe. Trinity 14 & 15 Geo. 2.

INFANT Trustees, by Order of the Court of *Chancery*, were to convey by Fine. *Birch* moved, that the Fine might be ordered to pass, notwithstanding the Infancy of the Trustees, who were Daughters of the late Sir *Thomas Lombe*, and one of them the Wife of Sir *Robert Clifton*. The Order in *Chancery* being read, and the Parcels compared, the Motion was granted. *Scrope versus Dom. Fitzwilliam & Ux.* Hilary 6 Geo. (a Case in Point) was quoted.

Heathcock, Baronet, against Hanbury, Esquire, and his Wife. Mich. 24 Geo. 2.

TWO Fines of Lands in *Northamptonshire* and *Rutlandshire*, taken at *Hamburg* in Foreign Parts, where the Cognizors resided, were ordered to pass by all the four Judges, upon an Affidavit of a Commissioner of the due Execution of each Fine, sworn before a Clerk in *Chancery* of the City of *Hamburg*, and authenticated by his Certificate or Attestation as a Notary Publick.

Say and Smith and others. Trin. 27 & 28 Geo. 2.

FI NE taken before *Prentice* an Attorney, and *Prentice* a Tradesman, as Commissioners. *Prentice* the Attorney died without making Affidavit of the due Acknowledgment of the Fine. One of the Cognizors became a Bankrupt, absconded, and did not surrender within the 42 Days as required *per Statute*. Fine ordered to pass on Affidavit of the due Acknowledgment by *Prentice* the Tradesman; (notwithstanding the general Rule requiring such Affidavits to be made by Attornies.) *Prime* for a Mortgagee for whose Security the Fine was taken.

Barber *Plaintiff*; Henry Nunn and Mary his Wife and others *Deforciant*s. Easter 28 Geo. 2.

THIS Fine was taken 13th *May* 1754, by *Dedimus potestatem*, Writ of Covenant tested 1st Day of *Easter* Term 1754, returnable from the Day of *Easter* in five Weeks (19 *May*,) 'twas compounded and the Prefine paid between the 17th and 20th *May*, and after passing the Return, Warrant of Attorney, and *Custos Bre-vium* Offices, was brought to the King's Silver Office 11th *June*, and the Clerk there then entered the King's Silver or Post-Fine in his Book, and on the Writ of Covenant; *Mary Nunn* the Cognizor died 27th *May*. A Caveat to prevent the compleating of this Fine was brought to the King's Silver Office 13th *June* (before the Record made up in Form) on Behalf of *John Nunn* eldest Son and Heir of the Cognizors. Rule to shew Cause why that Caveat should not be withdrawn made absolute. The Court utterly exploded the Notion which prevailed (undoubtedly by Mistake) in *Harneis* and *Micklethwaite* and his Wife, *Mich.* 6 Geo. 2. and *Gregory* against *Croucher* and others, *Mich.* 7 Geo. 2. (*viz.*) that the King's Silver is the Pre-fine or Fine for Licence to alienate; certainly 'tis not; the King's Silver is the Post-Fine, or Fine for Licence to accord. 2 *Inst.* 511-12. *Dyer* 246. The Return of the Writ of Covenant is agreed to be in the Life-Time of *Mary* the Cognizor; and from that Time the Crown has a Right to the Post-Fine, which was entered at the King's Silver Office before any Caveat against it; the making up the Record in Form is a ministerial Act, not necessary to be done previous to the Caveat; the Entry by the Clerk of the King's Silver as aforesaid is sufficient. 2 *Roll. Abr.* 10. C. 12. in Point. *Poole* for Plaintiff; *Prime* for *John Nunn* Son and Heir, &c.

Anthony Lister Gent. *Plaintiff*; John Lister and Johanna his Wife *Deforciant*s. Trin. 28 Geo. 2.

OF a Moiety of Lands, &c. in *Yorkshire*, Fine levied. Trin. 27 & 28 Geo. 2. Complaint was laid before the Court by *Thomas Cust* Gent. one of the Co-heirs of *William Staines* Esquire, deceased, supported by many Affidavits, setting forth, That *Johanna Lister* one of the Cognizors, Sister and the other Co-heir of the

the said *William Staines*, had for some Years past been disordered in her Senses, and was so at the Time when this Fine was levied; the Court thereupon, 9 *May* in last *Easter* Term, made a Rule for said *John Lister* to shew Cause why the Fine should not be vacated; and for *John Hancock* Gent. one of the Commissioners (who with two others took the Fine by *Dedimus potestatem*, and who made Affidavit of its due Acknowledgment, and the Capacity, &c. of the Cognizors) to answer the Matters in the Affidavits. Upon an Enlargement of the Rule, 31 *May* this Term, at the Instance of said *John Lister* and *Hancock*, the Court recommended it to them to produce said *Johannah Lister* (who resided in *Yorkshire*); and accordingly 18 *June* after the Affidavits, whereupon the Rule was made, and many Affidavits in Answer were read, she was brought into Court, and being examined by the Lord Chief Justice, appeared to be a Person of good Capacity, and very well to understand the Intent of this Fine, and the Deed declaring the Uses thereof; which was in Favour of her Husband, with whom she had lived many Years, and upon whom she was desirous to settle her Moiety of her said late Brother's Estate, and prevent its descending to said *T. C.* her Nephew, and Heir at Law. The Court discharged the Rule, with Costs of the Application to be paid by *Cust* to said *John Lister* and *Hancock*; and also Expences of said *Johanna's* Journey to *Westminster* to be paid by *Cust* to said *John Lister*, which Costs and Expences were to be taxed and ascertained by Prothonotary. *Prime, Willes, and Poole* for *Cust*; *Eyre, Hewitt, and Davy* for *John Lister* and *Hancock*.

Between Fleetwood Esquire Plaintiff; and Guisippe Calenda and Wife and others Deforcients. 27th February 1756.

[Vacation after Hil. 29 Geo. 2.]

LORD Chief Justice, assisted by Mr. Justice *Clive*, made an Order, That this Fine should pass as to said *Calenda* and his Wife, two of the Cognizors, considering the particular Circumstances of the Case; notwithstanding the same was not signed by them. Captain *Peter Mauger* one of the Commissioners attended, and made Oath, That this Fine was duly acknowledged before him and another Commissioner, by the said *Calenda* and Wife at
Naples

Naples in Italy; that these Parties were of full Age and good Understanding; and that the married Woman was examined apart from her Husband, and consented freely. The Fine being taken from these Parties beyond Sea, is not within the late Rule requiring an Affidavit, and the Signing of a Fine by the Cognizors is not an essential Part. The former Lord Chief Justices of this Court have required the Parties acknowledging Fines before them, to sign Copies on Paper, which have been kept at the Chief Justices Chambers as a Check upon the Parties; the Fine on Parchment delivered out and passed through the Offices, was not formerly signed by the Cognizors, but at the Foot of the Caption by the Chief Justice only.

Watts, and Birkett and Wife. Hilary 33 Geo. 2.

ON the Application of *Mary Tiffin*, one of the Persons intended to be barred by this Fine. A Rule was made for the Cognizors, &c. to shew Cause why further Proceedings to perfect the Fine should not be stayed, and former Proceedings vacated. The Fine was taken by two Commissioners in *Cumberland*, 19th March 1759, by Virtue of a *Ded' Pot'* bearing *Teste* 8th November 1758, *Birkett's* Wife one of the Cognizors died, 24th March 1759. The Writ of Covenant, which is always supposed to precede the *Ded' Pot'*, was not in Fact sued out 'till *Trinity* Vacation 1759, it bore *Teste* 7th November 1758, (the Day before the *Teste* of the *Ded' Pot'*) and was returnable in *July* 1759. The Fine was passed through the Offices, and the King's Silver recorded at the King's Silver Office before any Caveat entered there; but it appearing that the Writ of Covenant was sued out, and returnable after the Woman's Death, the Court upon hearing Counsel in support of the Fine, and against it would not in so plain a Case put the Party to bring a Writ of Error; but made the Rule absolute. Had the Writ of Covenant been returnable in the Woman's Life Time, and the King's Silver recorded before a Caveat, though after her Death, the Case would have been greatly varied; but as it stands at present 'tis quite out of Doubt. *Comberbach* 57. *Price* against *Davis*, and 71. *Farisley* 2. Dr. *Woodward's* Case. 2d *Inst.* 511-12. *Cro. Eliz.* 569. *Sheppard's* *Touchostone* 4. *Hewitt* and *Nares* for *Mary Tiffin*. *Pool* and *Davy* in support of the Fine. The Statute of Fines, and the subsequent Statute giving the *Ded' Pot'*, as also the Method of taking Fines

Fines at Bar were taken into Consideration. The Concord or Agreement is to be made at the Return of the Writ of Covenant ; if the Party dies before that Day, there can be no Agreement, all is void.

Habeas Corpus & Procedendo.

Wyatt *against* Markham. Trin. 7 & 8 Geo. 2.

MOVED for a *Procedendo* to *Boston Borough Court*; *Habeas Corpus* to remove the Cause being brought after interlocutory Judgment in the inferior Court. *Cur'* thought it too late after Judgment, and made the Rule for *Procedendo* absolute. *Wright* for Plaintiff; *Baynes* for Defendant. 43 *Eliz. c. 5.* 21 *Jac. c. 23.*

Hewit *against* Powell. Mich. 8 Geo. 2.

October 29. **D**efendant was brought to the Bar by *Habeas Corpus* returnable in one Month from the Day of St. Michael, to be committed to the *Fleet*, and the Court committed him, though the Day of the Return was past.

Hornbuckle *against* Eaton.

A *Habeas Corpus* to the Town-Court of *Nottingham* was delivered to the proper Officer in open Court on the first of *May* last, to remove a Plaint from that Court before Trial, notwithstanding which the Court below went on to Trial. Defendant moved for an Attachment against the Sheriff of *Nottingham* for proceeding to Trial after the *Habeas Corpus* delivered as aforesaid, and a Rule was made to shew Cause; but upon shewing Cause, it appearing that Issue was joined *April 27*, before the *Habeas Corpus* delivered, the Court below were warranted by the Act of Parliament to proceed. The Rule was discharged. *Birch* for Plaintiff; *Chapple* for Defendant.

Lawndy

Lawndy *against* Clarke, in Case. Mich. 17 Geo. 2.

Defendant brought a Writ of *Re. fa. lo.* but took no Care to procure it to be returned and filed within two Terms; Plaintiff afterwards obtained a Certificate from the Filazer that the *Re. fa. lo.* was not filed, and thereupon the Curfitor made out a *Procedendo* as usual, and Plaintiff proceeded to Trial, and had a Verdict in the Court below. Defendant insisted, that the Certificate ought to have been from the Prothonotary, and not the Filazer. In Replevin the *Re. fa. lo.* is filed by the Filazer, but in all other Actions by the Prothonotary; and so the Officers reported, and the Court held the Practice to be. The Rule to set aside the *Procedendo* was discharged, the Application being too late. Rule to shew Cause why *Re. fa. lo.* should not be taken off the File, enlarged, but never finally determined. *Drazer* for Defendant; *Barnardiston* for Plaintiff.

Burdus *against* Shorter and Satchwell. Mich. 17
Geo. 2.

Plaintiff moved for a *Ha. cor.* to bring two Prisoners in the *Fleet*, both charged in Execution, to the Sittings at *Guildhall*, to testify in this Cause, upon an Affidavit of their being material Witnesses; and a Rule was made to shew Cause why such *Ha. cor.* should not be granted; or why the Witnesses should not be examined upon Interrogatories, and their Depositions read in Evidence at the Trial; and afterwards enlarged to shew Cause as before, (Plaintiff indemnifying the Warden); but for Want of the Consent of Defendants and the Warden, the Rule was discharged. Sometimes such Writs of *Ha. cor.* have been granted. The single Point of Law is, Whether, under such *Ha. cor.* (the Prisoners being in Execution) the Warden could not defend himself against an Action for an Escape? The last Time this Question was before all the Judges, seven against five were of Opinion, that the *Ha. cor.* would not excuse the Warden, but he would be liable to answer for an Escape. *Stiles's Practical Register* 160, 283. *Lord Raymond* 851. granted *ad testificand. apud le Old Bailey pro Rege*, without Affidavit, *Pasch. 11 Ann. 3 Keble* 51. The King *against* Huggins, at the *Old Bailey*, granted *ad testificand. pro Rege*, Geo. 2. *Willes* for Plaintiff; *Skinner* for Defendant.

Pettit

Pettit and others *against* Molloy. Mich. 19 Geo. 2.

HA. cor. ad. satisfaciend. in this Cause only, three Judgment-Rolls produced in this and two other Causes, by Attorney for Plaintiffs, who desired that Defendant might be charged in Execution in all three. By the Judges in the Treasury, Defendant can only be charged in that Cause wherein the *Ha. cor.* is brought. There must be an *Ha. cor.* on every Judgment.

Francia *against* Lumbroza de Mattos and his Wife.

ON an Affidavit that *Mordecai Dalmeida*, a Prisoner in the *Fleet* charged in Execution, was a material Witness, Defendant moved for an *Ha. cor. ad testificand.* to bring him before Lord Chief Justice at the Sitting after Term. The Court declared it to be a very doubtful Point, whether such an *Ha. cor.* would be a Justification for the Warden in an Action of Escape; and therefore did not grant the Writ, but by Consent a Rule was made, that the Depositions of the said *Mordecai Dalmeida*, taken in *Chancery*, be read in Evidence on the Trial at Law. *Skinner* for Defendant; *Willes* for Plaintiff.

Ex parte Martin. Easter 25 Geo. 2.

Samuel Martin, brought into Court by *Ha. cor.* directed to the Sheriff of *Gloucestershire*, prayed to be committed to the *Fleet*, with the Causes mentioned in the Return, which were, first, a Detainer for Want of Sureties, by a Warrant from a Justice of Peace, on an Indictment for leaving a Bastard Child, whereby a Parish became chargeable with its Maintenance. Secondly, an *Excommunicato capiendo* issued out of *Chancery*, returnable in the *King's Bench*. And thirdly, with *Exchequer* Process on a Recognizance forfeited at the Sessions. The Court remanded the Prisoner, being of Opinion, that as to the two first Causes of Detainer, they had no Jurisdiction. As to the third, the Court inclined to think, that as it was not an Extent, Defendant might have been committed therewith, abstractedly considered.

Am

Imparlance.

Threlkeld *against* Goodfellow.

Defendant cannot plead in Abatement after a General Imparlance without obtaining a Special Imparlance precedent to the Time of Pleading, which must be within the four Days given by the Rule to plead.

Bond, and others, *against* Joep. Trin. 6 & 7 Geo. 2.

Declaration was delivered against Defendant, a Prisoner, on the last Day save one of *Easter* Term. A Question did arise, Whether Defendant should have an Imparlance till *Craf. Trin.* or must plead two Days before the Effoin-Day of *Trinity* Term? Upon looking into the old Rule touching the Delivery of Declarations to Prisoners by the Judges in the Treasury, they were of Opinion that Defendant must plead two Days before the Effoin-Day according to that Rule.

Sibson *against* Nivin. Hil. 10 Geo. 2.

THIS was an Action for defamatory Words, importing that Plaintiff was guilty of the Murder of *A. B.* Defendant moved for an Imparlance till next Term, on Affidavit that a Prosecution was now carrying on against Plaintiff for this Murder (committed on the High Seas) in the Court of Admiralty, and he would probably be tried for the Fact before next Term. A Rule was made to shew Cause, which was made absolute. Imparlanes are in the Discretion of the Court, and it may be of ill Consequence to enter into Evidence concerning this Murder in the Action for Words before the Trial for the Fact. *Burnett* for Defendant; *Wright* for Plaintiff.

Fitzwilliams against The Bishop of Hereford and the University of Cambridge, in Quare Impedit. Trin. 13 & 14 Geo. 2.

Hayward for Defendants moved for an Impar lance, the Declaration having been delivered after the Essoign Day, (*viz.* 4 June) Draper for Plaintiff produced a peremptory Rule to plead, after which there can be no Impar lance. The Rule to shew Cause was discharged; but the Court gave Defendants a Month's Time to plead.

against Higham, 12 June, in the Treasury.
Trin. 17 & 18 Geo. 2.

Defendant appeared to be a Lunatic, by Affidavits of his Wife and Dr. *Monro*, and a Commission of Lunacy was produced under Seal in *Chancery*, *teste* 7th instant. Impar lance ordered, upon hearing the Attornies on both Sides.

Baker against Barlow and his Wife. Mich. 18 Geo. 2.

THE Writ was returnable the first Return of the Term, and Defendants put in Bail in Time, and Plaintiff declared; but the Declaration not having been delivered with Notice to plead, according to the General Rule, *Pasch.* 3 Geo. 2. Defendants moved for an Impar lance. *Per Cur'*: This Rule has been taken to extend only to Cases where Plaintiff appears for Defendant, according to the Statute; but so long as the Rule subsists, in plain and express Words requiring all Declarations on Process returnable the first or second Return of any Term, to be delivered with Notice to plead, no Construction can be put upon it, contrary to the Letter, and an Impar lance cannot be denied. Rule absolute for Impar lance. *Urline* for Defendants; *Skinner* for Plaintiff.

Cam against Gardner. Hil. 19 Geo. 2.

WRIT returnable the first Return of this Term, in aailable Action, Declaration left in the Office without Notice to plead indorsed, but Notice of Declaration and to plead served on Defendant. Defendant moved in the Treasury for an Imparlance, for Want of Notice indorsed; which was denied, the Notice served on Defendant is sufficient within the Rule 3 Geo. 2.

Turner against Pigg.

WRIT returnable the first Return of this Term, Declaration delivered without Notice to plead indorsed; a Summons taken out for an Imparlance, afterwards Notice to plead given in Time, before the last four Days of the Term; held good Notice, and Imparlance denied in the Treasury, on hearing the Attornies on both Sides.

Note; A Rule to plead must be given subsequent to the Notice.

Swinley against Woodhouse. Mich. 21 Geo. 2.

AFTER the Judgment set aside by Rule of Court, Plaintiff's Agent applied to Defendant's Agent, and desired Leave to indorse Notice to plead on the Declaration delivered; which being denied, Plaintiff's Agent gave Notice to plead in Writing. Defendant applied for an Imparlance for Want of Notice to plead indorsed on the Declaration; which was granted. *Vide* General Rules, *Mich. primo, Mich. 3tio & Pasch. 3tio Geo. 2.* as to the Delivery of Declarations with Notice to plead; and *Baker against Barlow & Ux. Mich. 18 Geo. 2.* *Prime* for Defendant; *Skinner* for Plaintiff.

Cracroft, one, &c. *againſt* Willoughby, one, &c. Hil.
22 Geo. 2.

Plaintiff recovered Judgment by Bill, *Hil.* 19 Geo. 2. and in *Trinity* Term laſt (after a Writ of Error brought) had Leave of the Court to file a Bill to warrant the Proceedings of *Mich.* 19 Geo. 2. and this Bill, with Minutes of an Imparlançe ſubſcribed, was certified by the *Cuſtos Brevium* into the Court of *King's Bench*; which being a nugatory Act, that Court would take no Notice of it. Afterwards Plaintiff, (Defendant in Error) alledged Diminution, and by *Certiorari* carried up to the *King's Bench* a Record of the Imparlançe. Defendant (Plaintiff in Error) now moved to ſtrike the Imparlançe off the Roll. But the Court held, That by Virtue of the Rule for Leave to file a Bill of *Mich.* 19 Geo. 2. to warrant the Proceedings, Plaintiff might, as a neceſſary Conſequence, enter the Imparlançe on the Roll. Rule by Conſent, to refer to Prothonotary to tax Defendant's Coſts, occaſioned by Plaintiff's not entering Imparlançe on the Roll in Time, and Coſts of Application. Defendant to bring Damages, and Coſts recovered, into Court; Coſts to be taxed as above, to be deducted, and Reſidue paid Plaintiff; Satisfaction on Record to be acknowledged at Defendant's Expence. *Agar* and *Boote* for Plaintiff; *Draper* for Defendant.

Galcoigne and his Wife *againſt* Brown. *Trinity* 24
Geo. 2.

Defendant having been ſerved with Proceſs returnable the firſt Return of this Term, Plaintiff on the firſt Day of the Term left a Declaration in the Office *de bene eſſe*, and cauſed Notice thereof to be perſonally ſerved on Defendant the ſame Day; but Notice to plead not being indorſed on the Declaration left in the Office, the Queſtion was, Whether ſuch Indorſement was neceſſary, or not? And the Court, on looking into the General Rules *Mich.* 1ſt, *Mich.* 3d and *Eaſter* 3 Geo. 2. held, That in this Cauſe it was not neceſſary to indorſe Notice to plead on the Declaration, the Notice ſerved on Defendant is ſufficient; it was the original Courſe. After the Rule of *Mich.* 1ſt, to eſtabliſh the Practice, under the Statute to prevent frivolous and vexatious Arreſts,

(directing how Notice is to be served on Defendant where Plaintiff appears for him) Defendant was intituled to imparl, till the Rule of *Mich.* 3d took away the Imparlance. The Rule of *Easter* 3d directs nothing about the Notice, only that Declaration shall be delivered with Notice. The Declaration is not compleat till Notice; it is a Declaration only from the Time of Notice, which is the single Thing material. Rule to shew Cause why Imparlance, discharged. Two Cases in the Treasury had been determined, agreeable to the present Rule, before the Case in Court. *Swinley* against *Woodhouse*, *Mich.* 21 *Geo.* 2. for Plaintiff; \ for Defendant.

Inquiry.

Townshend *against* Pool. *Mich.* 7 *Geo.* 2.

THIS was an Action of Covenant, and three Breaches were assigned, one whereof was confessed, and the other two controverted, and a *Venire facias* was awarded to try the Issues joined between the Parties, and to assess the Plaintiff's Damages; as to the Breach confessed, upon the Trial, Plaintiff obtained a Verdict; but Damages were neglected to be assessed as to the Breach confessed, which was for Nonpayment of Rent. *Chapple* and *Skinner* moved for a Writ of Inquiry to assess the Damages upon the Breach confessed. The Court granted a Rule *Nisi*, which was afterwards made absolute.

Pinock *against* Willett, Administrator.

ACTION upon the Case for Goods sold and delivered. Upon the Execution of the Writ of Inquiry, Jury allowed Plaintiff 6 *l.* 5 *s.* Interest for the Balance of the Account due to him. Defendant moved to set aside the Inquisition; and Court were of Opinion that Interest could not be allowed in any Case, except upon Promissory Notes and Bills of Exchange, and that the Inquisition

tion ought to be set aside. But by Consent the 6 *l.* 5*s.* Part of the Damages, were ordered to be remitted by Plaintiff, to save the Expence of a new Inquiry. *Belfield* for Plaintiff; *Chapple* for Defendant.

Pryor against the Earl of Islay, Executor of the Earl of Suffolk. Hil. 7 Geo. 2.

THIS was an Action upon the Case on a Promissory Note, to which Defendant, with Leave of the Court, had pleaded doubly, viz. *Non ass.* & *Non ass. infra sex annos.* Plaintiff took Issue upon the *Non ass.* and replied an Original as to the *Non ass. infra sex annos*; and thereupon Issue was joined upon *Nul tiel Record.* Plaintiff upon the last Issue obtained Judgment; and thereupon proceeded to execute a Writ of Inquiry of Damages without Trial of the first Issue. Defendant moved to set aside the Writ of Inquiry; and the Court, upon hearing Counsel on both Sides, ordered the Writ of Inquiry and Inquisition taken thereon to be set aside. *Baynes* for Defendant; *Chapple* and *Comyns* for Plaintiff.

Mac Carty against Parminter. Trin. 7 & 8 Geo. 2.

PLainiff obtained Judgment upon arguing a Demurrer in an Action upon the Case, and proceeded to execute a Writ of Inquiry without getting Judgment signed by the Prothonotary; which the Court held to be irregular, and set aside the Writ of Inquiry. *Birch* for Defendant; *Chapple* for Plaintiff.

Chifvers against Lambert and Westley nuper Vic' Midd' Mich. 8 Geo. 2.

SKINNER moved for Defendants to set aside the Inquisition taken before the Coroner upon a Writ of Inquiry for Excessiveness of Damages, which were 50 *l.* This was an Action brought for a false Return of a *Rescous*, whereby the present Plaintiff, one *Cripple*, and others, were returned Rescuors; and it appeared that *Cripple* having brought his Action against Defendants for the false Return, had recovered 20 *l.* Damages. The Court made a Rule; whereupon *Eyre* shewed Cause, and produced Af-

fidavits, that Plaintiff, who kept a Tavern at *Twickenham*, was taken up by a Writ of *Rescous* founded upon the said Return, and carried to *Newgate*, where he was sometime imprisoned and put to very great Expences; and the Counsel for Defendants attended before the Coroner at the Execution of the Writ of Inquiry. Court discharged the Rule.

Burges against Nightingale. Mich. 10 Geo. 2.

A Writ of Inquiry was executed, and Plaintiff moved to quash the Inquisition, by reason of the Smallness of Damages; which was denied. *Prime* for Plaintiff; *Wright* for Defendant. Where the Jury find any Damages, the Inquisition must stand. *Aliter*, had they found no Damages.

Elmes against Tomlinson, Attorney. Mich. 12 Geo. 2.

RULE to shew Cause why Writ of Inquiry, returnable on a general Return (and not at a Day certain, as it should have been, the Proceeding being by Bill) should not be set aside, discharged, because this is Matter of Error, appearing upon the Record, and not of Irregularity; and whether it is helped, or no, by the Statutes of *Jeofails*, is not now the Question. *Boote* for Defendant; *Draper* for Plaintiff.

Kettle against Bromfall. East. 12 Geo. 2.

Plaintiff had given Notice of executing a Writ of Inquiry at *St. Albans, Com' Herts*, and both Parties attended with Counsel and Witnesses on *May 2, 1739*. But when the Under-Sheriff was about to execute the Writ, he perceived it to be returnable last Term, and would not proceed. Defendant moved for Costs upon Affidavit of great Expence, and had a Rule to shew Cause. Upon shewing Cause it was urged for Plaintiff, that this Court had never yet given Costs for not proceeding to execute Writs of Inquiry according to Notice. And this is a meer Mistake; Plaintiff was disappointed as well as Defendant. *Per Cur'*: Though there has been hitherto no Rule for Costs in this Court, yet Notices of Inquiry stand upon the same Reason

as Notices of Trial, and the Court of *King's Bench* grant Costs in both Cases; and were this a common Case, Costs could not be granted; but it appearing that the Inquiry was returnable long before the Day appointed for the Execution thereof, Let the Plaintiff pay Costs; it is not reasonable the Defendant should suffer by the Mistake of Plaintiff's Attorney; and let a general Rule be drawn up, that Costs be paid for the future where Inquiries are not executed pursuant to Notice. *Eyre* for Defendant; *Agar* for Plaintiff.

Bunting against Teasdale. Trin. 13 Geo. 2.

Plaintiff executed a Writ of Inquiry; whereupon the Jury found no Damages; and Plaintiff executed a second Writ of Inquiry without quashing the first: And on the second the Jury found an Half-penny Damages. Defendant moved to set aside the Execution of the second Writ, and had a Rule to shew Cause, which Rule was made absolute; the Court being of Opinion that the second Writ was irregularly issued, the first pending, and not returned. *Eyre* for Defendant; *Bootle* for Plaintiff.

Wallace against Humes. Trinity 13 & 14 Geo. 2.

AFTER the Execution of a Writ of Inquiry of Damages, final Judgment signed, and Execution executed, Defendant moved in *Easter Term* 1740 to set the same aside, and for Restitution of the Money levied, because the Inquiry was not executed, either before the High Sheriff of *Cambridgeshire*, (in which County the Action was laid) or his Under-Sheriff, but before one *George Worral*, an Attorney, who was desired by Plaintiff's Attorney to act as a Deputy to the Under-Sheriff for this Purpose; and a Rule *Nisi* was granted. Upon shewing Cause in *Trinity Term* 1740, it was alledged on Plaintiff's Behalf, that it was a common Practice, where Under-Sheriffs live at a great Distance from the Parties and their Witnesses, for such Under-Sheriffs to appoint Deputies for the Execution of Writs of Inquiry, in order to save Expence to the Parties. And although it appeared that one *White*, who acted as Under-Sheriff for this County, had given an Authority for the Execution of this Inquiry before some Attorney in *Wisbech*, where the Parties lived, and that Plaintiff's Attorney had paid him 13 s.

4*d.* for his Fee; yet the Court seemed clear of Opinion, that the Inquiry was improperly executed; for a Deputy could not appoint a Deputy. But it appearing, that the Defendant had made a Defence upon the Inquiry; and in Regard that only 9*s.* Damages were found by the Jury, the Court thought it would be doing Defendant more Service to let the Inquiry, &c. stand, than to set them aside; therefore they discharged the Rule, but declared, that in order to put a Stop to this Practice of Under-Sheriffs making Deputies, they would grant an Attachment against any one that should do it for the future. *Prime* for Plaintiff; *Skinner* for Defendant.

Davis against Skylins. Easter 14 Geo. 2.

RULE to shew Cause why Inquiry and Inquisition should not be set aside, as executed before a Person deputed by the Under-Sheriff, and acting without proper Authority. It appeared, on shewing Cause, that the Inquiry was executed before a Deputy appointed by a Deputation under the Seal of the Sheriff's Office, and the Rule was discharged, with Costs. *Bootle* for Plaintiff; *Gapper* for Defendant.

Langley against Bothwright, an Attorney. Mich. 15 Geo. 2.

AFTER an Interlocutory Judgment, Plaintiff sued out a Writ of Inquiry of Damages, and before the Return thereof, altered the same, caused it to be resealed, and afterwards proceeded to the Execution thereof, according to regular Notice. Defendant moved to set aside the Inquiry, by Reason of this Alteration, and obtained a Rule to shew Cause; which was discharged, the Court being of Opinion, that as the Writ of Inquiry had not been made Use of before the Alteration, the Plaintiff had done nothing irregular; and the Complaint being groundless, and containing some Scandal, the Court gave Plaintiff his Costs. *Willes* for Defendant; *Prime* and *Bootle* for Plaintiff.

Yate *against* Swaine, for False Imprisonment.

A Rule was obtained to shew Cause why the Writ of Inquiry of Damages, and Inquisition thereon, should not be set aside. Two Objections were made ; one, that the Notice was served upon the Defendant himself, and not his Attorney ; and the other, that the Time appointed by the Notice for executing the Writ of Inquiry was between the Hours of ten and five. It was admitted, for Plaintiff, that both Objections were good ; but it was insisted, that both of them were cured, by one *Ruffel* an Attorney's attending at the Execution of the Writ of Inquiry, on the Part of Defendant, cross-examining Plaintiff's Witnesses, and producing a Witness for Defendant. The Damages were 250*l*. No Special Damages being laid, and it appearing that Plaintiff was confined for no longer Time than 26 Days, and Plaintiff himself making no Affidavit about the Damages or Imprisonment, the Court thought the Damages excessive, and ordered the Inquiry to be set aside, upon Payment of Costs, and a new Writ of Inquiry to be executed before a Judge at next Assizes. *Willes* and *Wynne* for Defendant ; *Skinner* and *Birch* for Plaintiff.

Billers, Knight, and another, *against* Bowles. Hilary
18 Geo. 2.

RULE to shew Cause why Inquisition taken on Writ of Inquiry of Damages, made absolute ; no Evidence of Plaintiff's Demand having been given to the Sheriff and Jury. Plaintiff urged, that the Demand was by Promissory Note indorsed set forth in the Declaration, which was admitted by not pleading, and the Damages found were only the Amount of Principal and Interest due on such Note. But the Court held, That the Note indorsed ought to have been produced, and the Note and Indorsement proved. *Agar* for Defendant ; *Urkin* for Plaintiff.

Penrice, Widow, *against* Penrice, by Writ of Dower
unde nihil habet. Trinity 18 & 19 Geo. 2.

ON the Execution of a Writ of Inquiry, the Jury found for Damages the Value of a Third Part of the Land, from the Time of the Husband's Death to the Day of the Inquisition, without any Deduction for Reprizes, *viz.* Land-Tax, Repairs and Chief-Rent, and for Costs, the Jury gave the Amount of the Attorney's Bill for the Demandant, upon his Evidence that the same was a reasonable Charge, and he expected it from his Client. Damages are given by the Statute of *Merton*, Costs by the Statute of *Gloucester*. The Court thought, that the Value of the Third Part of the Profits run since the Death of the Husband, should have been computed only to the Time of awarding the Writ of Inquiry, and not to the Day of the Inquisition. That an Allowance ought to have been made for Reprizes; the Words of the Writ are (*ultra Reprisas*); and that the Attorney's Bill, to his Client the Demandant, ought not to have been the Measure of Costs. The Inquisition was set aside, and a new Writ of Inquiry ordered to be executed before a Judge at next Assizes, on Payment of Costs. *Skinner* for Tenant; *Birch* and *Wynne* for Demandant.

Quare, Whether the Jury should not have given Common Costs, One Shilling, as usual, and the rest be taxed and allowed *de incremento per* Prothonotary? But this was not before the Court.

Ellis *against* Wall. Trinity 19 & 20 Geo. 2.

INquisition taken on a Writ of Inquiry of Damages set aside, for Want of Plaintiff's proving a Promissory Note set forth in the Declaration. Plaintiff's Attorney insisted, before the Sheriff and Jury, that the Note was admitted by Defendant's suffering Judgment, and the Jury found the Sum mentioned in the Note for Damages, without any Proof; which was held unwarrantable. *Agar* for Defendant; *Willes* for Plaintiff.

Sparrow against Reed, Esquire, for Damage done to Common Right, Trin. 25 & 26 Geo. 2.

RULE made absolute for the Execution of Writ of Inquiry of Damages before a Judge at next Assizes, though no Affidavit was produced to support the Rule. Juries are returned in a much better Manner at the Assizes, than usually, for Writs of Inquiry. An improper Deputy is often appointed to represent the Sheriff, sometimes Plaintiff's Attorney. Summary Jurisdictions are not to be encouraged. Defendant is in the Rank of Esquire; he desires that the Writ may be executed in the Presence of a Judge; the extraordinary Costs whereof are like to fall on himself. *Willes* for Defendant; *Prime* for Plaintiff.

Inspection of Court-Rolls and Books.

Richards, Qui tam, &c. against Pattinson. Trinity 10 Geo. 2.

THIS was an Action brought upon the Statute 9 *Anna*, against Defendant, Deputy Post-Master of *Carlisle*, for the Penalty of 500*l.* for his persuading a Person to vote at the last Election of Members to serve in Parliament. Defendant moved for Inspection of the Corporation Books. *Per Cur'*: Defendant is laid to be an Elector, and having a Right to vote, he is intitled to inspect the Books by the Act of Parliament: To this Purpose the Books are publick, and therefore let Defendant have the Inspection of that Part of the Corporation-Books where the Names of the Freemen are inrolled, and Copies at his own Expence. *Eyre* and *Bootle* for Defendant; *Chapple* and *Wright* for Plaintiff.

Smith *against* Huggins. Trinity 11 & 12 Geo. 2.

Defendant moved for Leave to inspect the Books of the Conic Lamp-Office, and had a Rule to shew Cause, which was discharged. *Per Cur'*: The Proprietors of these Lamps are not a Corporation, their Books are not publick, nor do they appear to be Trustees for Defendant. *Wright* for Defendant; *Eyre* for Plaintiff.

The Brewers Company *against* Benson. Easter 19 Geo. 2.

ACTION brought on By-Laws against Defendant, exercising the Trade of a Brewer, but no Member of the Company. By-Laws affecting Strangers interest them therein. Rule absolute for Defendant to inspect the Company's Books, and take Copies. *Skinner* for Defendant; *Willes* for Plaintiff.

Roe *against* Aylmar and others, on the Demise of Hare, Bart. in Ejectment. Hil. 27 Geo. 2.

THIS Ejectment was brought on the Demise of the Lord of a Manor, against the Defendant his Tenant, to recover Possession of a Copyhold Estate, which the Lord insisted was forfeited, by Reason of the Tenant's not rebuilding a Cottage. Defendant moved for Leave to inspect and take Copies, at his own Expence, of the Court-Rolls of the Manor; but the Motion was denied, for Want of an Affidavit that a previous Application had been made on Defendant's Part, to the Lord or his Steward, for an Inspection and Copies, which were denied. Though this is a Dispute merely between the Lord and his Copyhold Tenant touching a Forfeiture, yet the same previous Application is necessary as in other Cases. The Tenants of a Manor are the only Persons who have a Right to inspect the Court-Rolls. The Court always expect an Affidavit to shew that the Person, on whose Behalf the Motion is made, is a Tenant of the Manor, and has applied and been denied, as above-mentioned. *Dra-per* for Defendant; *Prime* for Lessor of Plaintiff.

Hobson

Hobson Esquire *against* Parker Esquire and others, in
Trespafs. Hil. 29 Geo. 2.

Defendant *Parker* set up a prescriptive Right to Common from *Lammas* to *Candlemas* on the *Locus in quo*, whereon Issue was joined before, but not tried at last Assizes. Plaintiff appeared to be a Freeholder, and Defendant *Parker* to be a Freeholder's Tenant, within Lord *Dartmouth's* Manor of *Lewisham*; Defendant *Parker* moved for Leave to inspect the Court Rolls as to the Usage and Custom of Common Right. On shewing Cause by Defendant and the Lord of the Manor, it was urged, That though the Tenants of Copyhold or Customary Manors have a Right to inspect Court Rolls, which contain their Titles; yet as this is a Freehold Manor, and the Court not in Nature of a Court of Record as a Copyhold, but a common Court Baron, and the Rolls the Lord's private Property; the Freeholders within the Manor are not entitled to inspect the Rolls, which are the Lord's Title; especially as there's nothing in the Pleadings about the Custom of the Manor. For Defendant *Parker* it was said, That though a Stranger has not, every Tenant has, a Right to inspect the Lord's Rolls; That no Title appears on the Rolls of a Court Baron; That a Court Baron can present and amerce, though not fine; That the Freeholders are Judges of the Court Baron, and have a Right to see its legal Proceedings. Rule absolute upon Mr. *Pickering*, Lord *Dartmouth's* Steward, for Leave to inspect, &c. *ut supra*. *Draper* and *Wynne* for Defendant; *Parker*, *Willes*, and *Poole* for Plaintiff and Lord *Dartmouth*.

Baldwyn against Tudge. Trin. 27 & 28 Geo. 2.

ACTION for an Amerciament at a Court Baron. Rule to shew Cause, why Defendant a Freehold Tenant should not have Leave to inspect Court Books, &c. generally, made absolute as to such Entries only as relate to Amerciaments. *Poole* for Defendant; *Prime* for Plaintiff.

The Mayor, Bailiffs, &c. of Exeter *against* Coleman.
Hil. 28 Geo. 2.

IN an Action for Petit Customs upon Hemp, Flax, and other Merchandize, founded on a prescriptive Right, Defendant moved for Leave to inspect the Corporation's Table of Rates and Account Books of Sums received; denied. This would be looking into the Plaintiff's Title; Defendant is a Stranger and no Member of the Corporation. *Poole* for Plaintiffs; *Prime* for Defendant.

Judgments.

Theedam *against* Jackson. Mich. 6 Geo. 2.

FOUR Questions did arise; the first, Whether for want of Payment for the Copy of an Indenture set out in the Declaration (whereof the Defendant had craved *Oyer*) Plaintiff could sign Judgment?

The second, Whether Plaintiff having been staid by a Special Injunction out of *Chancery* (whereby he was restrained from signing Judgment) near twelve Months after Rule to plead given, can, after such Injunction dissolved, sign Judgment, without giving a new Rule to plead?

The third, Whether no Appearance being actually entered, *Forrest* the Defendant's Attorney's undertaking to appear, be sufficient to support the Judgment?

The fourth, What Time Defendant had to plead after *Oyer* of the said Indenture given? The three first Points were determined in Favour of Plaintiff; but upon the fourth, the Court held that Defendant had the same Time to plead after the Declaration was verified by *Oyer*, as he had at the Time *Oyer* was demanded; and thereupon the Judgment was set aside, it having been signed the next Day after *Oyer* given, and the *Oyer* having been demanded two Days before the Rule for pleading was out.

Martyn,

Martyn, *Qui tam*, against Skinner.

THE Defendant's Attorney left a Note at the House of Plaintiff's Attorney on a double Penny Stamp, in this Manner, (*viz.*) I plead *Nil debet*. Yours, &c. and the Plaintiff's Attorney, without sending Notice to Defendant's Attorney, that he expected a Plea in Form, signed Judgment; and upon a Motion to set the Judgment aside, it was held to be regular, and the Note aforesaid to be no Plea. Pleas delivered to Attornies must be drawn up in the same Manner as to be left in the Office.

Moore against Hodgson.

MOTION to set aside Judgment signed for not paying for the Issue, Plaintiff's Attorney in Town calling on Defendant's Agent there for a Plea. It appeared, upon shewing Cause, that Defendant had pleaded by his Country Attorney; thereupon the Plaintiff's Attorney in the Country tendered the Issue, which Defendant's Attorney refused to pay for; and Plaintiff's Attorney sent to his Agent in Town to sign Judgment; which was held good, Defendant's Attorney having undertook to be the Agent by pleading in the Country.

Gibson against the Bishop of Bath and Wells, and Bond. Hil. 6 Geo. 2.

In Quare Impedit. **I**SSUE was joined between the Parties in Hil. 4 Geo. 2. and afterwards Judgment was entered at the Foot of the Issue of Plaintiff by *Cognovit Actionem (re-licta verificatione p[ro]p[ri]i)* by Virtue of a Warrant of Attorney for that Purpose, pretended to be executed by Defendant Bond, the Validity of which Warrant of Attorney being contested, an Issue was directed by the Court to try whether the same was duly executed by Bond or not; and upon Trial the Jury found it to be a Forgery; whereupon the Court ordered the Judgment entered as aforesaid, by Virtue of said Warrant of Attorney, to be set aside. Defendants moved that said Judgment entered upon Record, subsequent

sequent to the Issue joined, might be struck out of the Roll, in order that Defendants might make up the Record for Trial by Proviso: The Court denied to make any Rule, but declared that the said Judgment might be vacated in proper Manner, by Virtue of the former Rule for setting it aside; and a *Vacatur hoc Judic'* was accordingly entered on the Margent of the Roll.

Fray *against* Smith.

MOtion to arrest Judgment for a Defect in the Award of the *Venire facias*, which was in *English*, and followed the old *Latin* Form (Twelve and so forth) for *Duodecim, &c.* and so on. Upon shewing Cause, the Court were of Opinion that the *Venire* was awarded well, the Intent of the Parliament being to translate no more into *English* than was before in *Latin*; but being told the same Question was depending in the Court of *King's-Bench*, the Court enlarged the Rule 'till next Term.

Scott *against* Ferrall, in Covenant, Damages laid
20 *l.* Easter 6 Geo. 2.

PLaintiff, upon the Trial, proved Damages to the Amount of 13 *l.* Defendant set off a mutual Debt of 5 *l.* 4 *s.* and Plaintiff obtained a Verdict for 7 *l.* 16 *s.* The Proceedings were in *Latin*, and the Damages being under 10 *l.* the Court had made a Rule to stay the Entry of final Judgment, *Quousq;* &c. which was discharged, the Court being of Opinion that the Cause of Action must be the Plaintiff's Demand, and not the finding of the Jury.

Rivers, and others, *against* Plumlee.

A Summons for Time to plead was served upon Mr. *Lyte*, Plaintiff's Attorney, who attended at the Time appointed by the Summons, and staid an Hour; but Mr. *Jones*, Defendant's Attorney, did not attend; whereupon Mr. *Lyte*, Plaintiff's Attorney, signed Judgment, which was set aside by the Court as irregular, for want of discharging the Summons.

Church

Church *against* Jafon. Trin. 6 & 7 Geo. 2.

ACTION of Debt upon Bond ; the *Alias Dict'* was in the Declaration put in *Latin*, as in the Bond. *Chapple* moved in Arrest of Judgment upon the late Act of Parliament, that all Proceedings at Law should be in *English*, and obtained a Rule *Nisi*. Afterwards *Eyre* shewed Cause, and the Court were of Opinion that the *Alias Dict'*, if set out at all, must be set out in the same Language as in the Deed, and would otherwise be erroneous, and discharged the Rule.

Panter *against* Coppin.

CORBET moved to set aside the Judgment signed for want of a Plea, upon an Affidavit of the Delivery of a Plea to Plaintiff's Attorney in due Time, which was a Plea of an Outlawry *against* Plaintiff, in the *King's Bench* pleaded in Bar ; but not *sub pede Sigilli*. *Chapple* defended the Motion ; and insisted, that the Outlawry not being pleaded *sub pede Sigilli*, Plaintiff was not bound to accept it, and therefore might regularly sign Judgment, cited 1 *Salk.* 217. *Carthew* 220. The Court ordered it to be moved again ; and *Corbet*, when the Motion came on the second Time, argued that the Plea being pleaded in Bar, and not as a Dilatory, differs it from the Cases quoted by *Chapple*. *Corbet* quoted *Coke's Inst.* 128. 1 *Lutw.* 40. 2 *Mod.* *Atkins* and *Bayle*. *Chapple* replied, That Lord Chief Justice *Holt's* Words in *Carthew* and *Salkeld* go both to Pleas in Bar and Abatement, where the Outlawry is in another Court. *Per Cur'* : Sir *W. Willypoles's* Case in *Cro. Car. Robinson* 213. 2 *Vent.* 282. quoted. Plea in Bar not dilatory, Plaintiff cannot take upon him to judge of the Plea in Bar, he should apply to the Court, or demur. Rule made to set aside the Judgment.

Farrance *against* Brignall, in debito super Obligationem.

BARNES moved to set aside the Judgment upon an Affidavit of a Demand of Oyer of the Bond the 29th of *May* (being the same Day whereon a Plea was demanded) and of the Service

of Mr. Justice *Fortescue*'s Summons the same Day for *Oyer*, and Time to plead. *Darnal* for Plaintiff opposed the Motion, and produced an Affidavit that *Oyer* was not demanded, nor Summons served 'till after the Rule for Pleading was out. Court refused to make any Rule.

Matthews and Wife, Administratrix, *against* Stone.

THE Writ was returnable in *Hilary* Term, and a Declaration left in the Office the same Term; and afterwards an Appearance entered by Plaintiff, according to the Act of Parliament; but no Notice of the Declaration was given 'till the 12th of *April* for Defendant to plead within the first four Days of this Term. *Chapple* moved to set aside the Judgment, the Declaration having been left in the Office before the Appearance entered; and a Rule *Nisi* was granted. *Belfield* afterwards shewed Cause, and Court discharged the Rule, the Declaration being a Declaration well delivered only from the Time of the Notice; but Court made another Rule to set aside the Judgment upon Payment of Costs, pleading an issuable Plea, and taking short Notice of Trial.

Morse, an Attorney, *against* Farnham.

THE Attachment of Privilege was returnable on *Friday* next after the Morrow of the *Holy Trinity*, with Notice for Defendant to appear on the 25th of *May*. Appearance was entered by Plaintiff *June* 1, and Judgment afterwards signed. Defendant moved to set aside the Judgment, the Appearance being entered by Plaintiff one Day, 'if not two Days before the Time for Defendant's appearing was expired; and a Rule *Nisi* was granted on *Corbet*'s Motion. *Hawkins* and *Darnal* afterwards shewed Cause, and insisted that the Cause of Action was above 10 *l.* (*viz.*) 13 *l.* and upwards; and therefore this was not a Proceeding upon the last Act of Parliament, but upon the Act 12 *Geo.* 1. whereupon Defendant has but four Days to appear. Court were of Opinion, that no Sum being mentioned in the Writ, it stands at large, and the Appearance by Plaintiff was irregularly entered; but it appearing that Defendant had afterwards Notice of the Declaration
being

being left in the Office, he should have applied before Judgment, and was too late after Judgment; and therefore the Rule was discharged.

Glascock *against* Martin. Mich. 7 Geo. 2.

THE Issue Book was left in the Office, and Notice thereof left under the Chamber-Door of Mr. *Field*, Defendant's Attorney, the same Day, by Mr. *Cole*, Plaintiff's Attorney, who could not that Day find *Field*, but next Day found him at his Chambers, and gave him Notice that the Issue Book was left in the Office; and demanded the Money due for the same, which *Field* refused to pay, insisting that the Issue Book ought to be brought to him; whereupon *Cole* signed Judgment. The Court, upon hearing Counsel on both Sides, and the Report of Prothonotaries, *Cooke* and *Thomson*, held, that Defendants Attornies must pay for Issue Books at their Peril; and if they are not to be found, Issue Books may be left in the Office, and discharged the Rule obtained to set aside the Judgment *Nisi*; but let Defendant in, to try the Merits, and set aside the Judgment upon Payment of Costs, pleading the General Issue, and taking short Notice of Trial.

Welland, an Attorney, *against* Rock. Mich. 7 Geo. 2.

Defendant moved to stay Proceedings in an Action brought for Fees, no Bill of Fees having been delivered, and obtained a Rule *Nisi*; but upon shewing Cause, the Court were of Opinion that they could not consider the Matter as an Irregularity because it is illegal, and against an Act of Parliament; but set aside the Judgment and Inquiry upon Payment of Costs, bringing the Money into Court, pleading the General Issue, and taking short Notice of Trial.

Taylor *against* Slocomb.

A Rule to plead was given in *Trinity* Term last; and Defendant obtained Time, by Mr. Justice *Reeves*'s Order, to plead 'till the first Day of this Term; and for want of a Plea the Plaintiff

signed Judgment of this Term, without giving a new Rule to plead; which Court held to be regular, the Rule to plead given last Term being enlarged, by the Judge's Order, to the first Day of this Term. *Chapple* for Plaintiff; *Umlin* for Defendant.

Lazenby against Bradley.

THE Writ was returnable the first Return of this Term; whereto Defendant appeared by his Attorney, and Plaintiff declared in *Yorkshire*, gave a Rule to plead, and after demanding a Plea, signed Judgment for want thereof in four Days; Defendant moved to set aside the Judgment: And the Question before the Court was, Whether in this Case the Defendant should have four or eight Days to plead? And the Court held, that pursuant to the Rule of Court made in *Michaelmas* Term, the third of his present Majesty, in all Cases upon Writs returnable the first or second Return of any Term, if the Plaintiff doth not declare in *London* or *Middlesex*, or the Defendant lives above twenty Miles from *London*, the Defendant hath eight Days Time to plead, and therefore set aside the Judgment.

Robinson against Sparrow.

WARD, Plaintiff's Attorney, tendered the Issue Book to the Clerk of *Horne*, Defendant's Attorney, and demanded Payment for entering Defendant's Appearance: *Horne's* Clerk offered to pay the Rest of the Money demanded, but refused to pay for entering the Appearance; whereupon *Ward* signed Judgment, and Defendant moved to set the same aside. *Per Cur'*: Defendants Attornies must pay the Money charged upon the Issue Book, which Plaintiff's Attornies are to receive at their Peril, and therefore Judgment was held to be regular; but the Merits not having been tried was set aside upon Payment of Costs, pleading the General Issue, and taking short Notice of Trial.

Blaxland, an Attorney, *against* Burges, Widow.

DEclaration filed *November 3*, Notice and Rule to plead given the same Day. *November 12*, a Release pleaded, with a *Profert in Cur'*, and the same Day *Oyer* was demanded by the Plaintiff in Writing. *Nov. 14*, in the Afternoon, Judgment signed for want of *Oyer*. Question, Whether Plaintiff could sign his Judgment, Defendant not having given *Oyer* according to Demand? *Nov. 26, 1733*, Upon this Point all the Judges were of Opinion, that in Case Defendant pleads with a *Profert*, and *Oyer* be demanded, and not given in a reasonable Time, Plaintiff may sign his Judgment without applying to the Court to set aside the Plea, it being esteemed as no Plea 'till verified by *Oyer*.

Charleton *against* Hankey and another. Hil. 7 Geo. 2.

THE *Capias* was returnable 27th *October* last, and Judgment signed *November 7th* following. *Chapple* moved to set aside Judgment as signed the 12th Day after Return of the Writ, which was one Day too soon, Defendant having, by the late Act of Parliament, eight Days to appear after the Return of the Writ, and by the Practice of the Court four Days afterwards to plead: And the Court made a Rule to shew Cause; whereupon *Darnall* shewed for Cause, that the Declaration was left in the Office *de bene esse* (pursuant to the Rule of Court made in *Michaelmas* Term 3 K. G. 2.) on the third *November*, and Notice thereof that Day served on Defendant, and a Rule to plead given the same Day; and on 7th *November*, Defendant not having appeared, Plaintiff, upon the usual Affidavit, entered an Appearance for him; and afterwards, the same Day, signed Judgment, which the Court held to be regular, and discharged the former Rule.

Bosanquet *against* Rondeau.

THE Writ was returnable in eight Days of St. Hilary, *Jan. 20*, and Declaration filed in the Office *de bene esse*, *January 23*, and Notice given Defendant that Day, and a Rule to

plead given, which was out on *Saturday* 26th of *January*. On *Monday* Morning 28th, Plaintiff entered Defendant's Appearance, and in the Afternoon signed Judgment. The Court, upon hearing Counsel on both Sides, were of Opinion, That by the late Act of Parliament the Defendant hath eight Days to appear after the Return of the Writ, (*viz.*) exclusive of the Return-Day, and therefore set aside the Judgment, the Appearance being entered, and Judgment signed one Day too soon. *Darnal* for Plaintiff; *Chapple* for Defendant.

Coulson against Turnbull and others.

JUDGMENT was signed against all the Defendants in a joint Action, though one of them never had Notice either of the Writ or Declaration. *Wynne* and *Wright* moved to set aside the Judgment, and a Rule was made *Nisi*; whereupon *Eyre* shewed for Cause that a Writ of Inquiry was executed, and therefore the Motion came too late: But *per Cur'*, the Judgment can never be good as to that Defendant who was not served; and therefore the Judgment being joint must be set aside as to all.

Amey and Garlick. Easter 7 Geo. 2.

THIS Action was brought against the Defendant as an unmarried Woman: She and her Husband plead in the following Manner, *to wit*, And *S. H.* and *A.* his Wife, late the said *A. Garlick*, and introduce the Plea with the Marriage, and then say that the said *A. Non Assumpsit*. Plaintiff signed Judgment as if there had been no Plea in the Cause, which was set aside upon hearing Counsel on both Sides. *Chapple* for Plaintiff; *Belfield* for Defendant.

Sedgley against Westbrooke. Trin. 7 & 8 Geo. 2.

THIS was an Action of Debt upon a Judgment. Defendant moved to stay the Proceedings pending a Writ of Error, which the Court ordered upon giving Judgment in this Action. A Rule of the Court of *King's Bench* was produced, whereby

whereby Proceedings were staid without giving Judgment pending the Writ of Error ; but *per Cur'*, the Practice is otherwise here.

Camp, Qui tam, &c. *against* Gale.

Defendant moved in Arrest of Judgment the last Day of the Term, but had no Affidavit of Notice of the Motion. The Court made the common Rule to stay the Entry of final Judgment till Cause shewn, but declared, that for the future they would never make a Rule to stay upon a Motion in Arrest of Judgment the last Day of a Term without Notice. *Chapple* for Defendant.

Smith *against* Randall. Mich. 8 Geo. 2.

Upon an Issue of **T**HIS was an Action upon a Bail-Bond. Nul tiel Record. Defendant pleaded *Comperuit ad diem* : Whereupon this Issue was joined, and this (*November 4.*) being the Day given for Defendant to bring the Record of the Appearance into Court, he did not produce a Record of Bail and Surrender thereupon ; but one Person only being Bail, it was looked upon as no Bail, and Plaintiff had Judgment. *Hawkins* for Defendant ; *Baynes* for Plaintiff.

Paul *against* Southouse.

Declaration delivered at the House of Defendant's Attorney between 11 and 12 o'Clock at Night held irregular. All Transactions of this Sort must be before * 8 at Night, as held in *Cooke against Ibbetson*, *Trin. 5 & 6 Geo. 2.* But it appearing that a Plea was demanded *October 26*, and that Defendant did not move the Court till *Nov. 7*, although Judgment was signed *October 28*, Defendant hath not complained in the first Instance as he ought, and therefore the Rule to shew Cause why the Judgment should not be set aside was discharged. *Belfield* for Plaintiff ; *Umlin* for Defendant.

* *Note* ; The Hour was afterwards made 9.

Grey *against* Saunders. Hil. 8 Geo. 2.

THE Writ was returnable *tres Mich.* and an Appearance entered by the Plaintiff. The Declaration was left in the Office November 9, and Rule to plead then given, Notice of the Declaration filed was served on Defendant November 11. Defendant moved last Term to set aside the Judgment, and obtained a Rule to shew Cause, which was made absolute upon hearing Counsel on both Sides. The Declaration not being delivered *de bene esse* was only well delivered from the Time of Notice, and before that Time no Rule to plead could be given. *Chapple* for Defendant; *Eyre* for Plaintiff.

Belwood *against* Chambers, Executrix.

FOUR Judgments had been signed against the Defendant, who had complained against Plaintiff, and Mr. *Rowning* her Attorney, for vexatious Proceeding in multiplying Suits, and had obtained a Rule for Plaintiff and *Rowning* to shew Cause why two of the Judgments should not be set aside with Costs; and upon shewing Cause, it appeared that the first Judgment was after a Verdict signed *post mortem Defendentis secundum Statutum*; the second was an Action of Debt upon the first Judgment, wherein Plaintiff recovered *de Bonis Testatoris*; the third suggesting a *Devastavit*, was a Judgment *de Bonis propriis*; the fourth was in an Action brought upon the third Judgment, wherein Defendant was held to Bail; wherefore it was insisted by Plaintiff, that the whole Proceeding was perfectly regular, and that the third Judgment, which was the first whereupon Plaintiff could bring an Action of Debt to hold to Bail, was the first compleat Judgment. Defendant had brought a Writ of Error; whereupon the second Judgment was affirmed in the Court of King's-Bench, and lay by till after the fourth Judgment before she made any Complaint of Irregularity or Vexation, without ever offering any Satisfaction for Plaintiff's Demand. For Defendant it was urged, that a *Devastavit* might have been suggested on the first Judgment, and that multiplying so many Suits was vexatious and oppressive; and a Case was quoted, *Cooper against Draper*, Trin. 5 Geo. where the Court had ordered an Attachment against Mr. *Welland* the Attorney for loading the Defendant

dant with Action upon Action of Debt upon Judgment. Court were of Opinion, that no Irregularity appeared in the Plaintiff, and that the Proceedings are warranted by Law, if there is any Hardship upon Defendant, it is occasioned by her own standing out, and therefore discharged the Rule. *Chapple* for Plaintiff and *Rowning*; *Eyre* for Defendant.

Long *against* Lingood.

PLaintiff replied to a Plea of a Record of a former Recovery of the same Debt, *quod non habetur aliquod tale Recordum*, and gave Notice upon the Back of the Replication to execute a Writ of Inquiry of Damages in Case Judgment went for him upon the Issue of *Nul tiel Record*. Defendant moved to set aside the Inquiry for want of due Notice, and insisted that this Case is not within the Letter of any of the Rules of Court obliging Defendants to take short Notice. A Rule was made to shew Cause, which was afterwards discharged upon hearing Counsel on both Sides. If this Case be not within the Letter of the Rules, it is within their Intention, and is warranted by the constant Practice of the Court. *Eyre* for Plaintiff; *Wright* for Defendant.

Warren *against* Lapdon. Easter 8 Geo. 2.

InTrespas. THE Plaintiff declared *Quare cum*. *Belfield* moved in Arrest of Judgment, but no Rule was made, the Court being of Opinion, that though the *cum* in the Count, if it stood alone, might be bad, yet the Recital of the Original which goes before helps it. *Clarke* against *Lucas*, *Mich. 2 Geo. 2.* same Case, which was removed into the King's Bench by Writ of Error, and remains there undetermined.

Jones *against* Wilkinson.

THE Appearance was regularly entered by Plaintiff, and before Judgment Defendant employs an Attorney, and gives Notice thereof to Plaintiff's Attorney. The Question was, Whether it was necessary to demand a Plea of Defendant's Attorney before Plaintiff could sign Judgment, and the Court was of Opinion,

nion, that the Appearance being entered by Plaintiff, he ought to go on upon the Act of Parliament, and it is not necessary in that Case, that a Plea should be demanded. *Darnal* for Defendant; *Comyns* for Plaintiff.

Arden against Lamley.

Plaintiff's Attorney after Writ of Error brought, artfully delad signing his final Judgment till the Writ of Error was spent, and then brought an Action of Debt upon the Judgment. The Court ordered Proceedings in the Action upon the Judgment to be staid, and a new Writ of Error to be brought at Plaintiff's Attorney's Expence.

Mason on the Demise of Kendale, against Hodgson.

In Ejectment in Com' Staff. **T**HE Declaration was delivered to the Tenant in Possession in *Trinity* Vacation last, with Notice to appear in *Hilary* Term then next. The Tenant in *Michaelmas* Term last entered an Appearance by his Attorney, but did nothing farther, and four Days after *Hilary* Term the Plaintiff finding no Appearance entered of *Hilary* Term, and no common Rule being entered into or Plea pleaded, signed Judgment against the Casual Ejector. The Tenant moved to set aside the Judgment, and on hearing Counsel on both Sides, the Court was of Opinion that the Judgment was regular, the Appearance should have been entered of the Term mentioned in the Notice; but as the Title had not been tried, the Judgment was set aside upon Payment of Costs, entering the Appearance of the proper Term, and entering into the common Rule by Consent. *Birch* for Defendant; *Skinner* for Plaintiff.

Atterbury against Troward. Trin. 8 & 9 Geo. 2.

A Plea in Abatement pleaded within four Days after the Declaration delivered, without taking the Declaration out of the Office, or paying for the Appearance which was entered by Plaintiff according to the Statute. The Plea was held to be pleaded regularly, and Judgment signed for want of a Plea was set aside. *Belfield* for Defendant; *Chapple* for Plaintiff.

Taylor

Taylor against Lawfon.

PLEA delivered in the Country held to be bad, though with Notice to set off a mutual Debt, which Notice must necessarily be proved at the Assizes by the Person that delivered it, with the Plea; but the Plea being delivered the first Day of last Term, and the Country Attornies both living in the same Town, the Judgment was set aside, and Costs were ordered to attend the Event of the Trial. *Eyre* for Plaintiff; *Chapple* for Defendant.

Hafelfoot against Duke. Mich. 9 Geo. 2.

BY Agreement of the Country Attornies the Issue was to be delivered in the Country; but being tendered in Town, and not paid for by the Agent, Judgment was signed, which was held to be regular, the Agreement being void. *Wright* for Plaintiff; *Eyre* for Defendant. *Vide Ekwood against Ekwood, Trin. 6 & 7 Geo. 2.*

Craven against Aislabic. The same against Anderton.

A Motion was made to set aside the Judgments in these Causes, and the Irregularity complained of was, that the Rules to plead were given before Notice of the Declarations being left in the Office were served upon Defendants, the Appearances having been entered by Plaintiff, and the Proceeding upon the Act of Parliament. It appeared that Plaintiff's Attorney finding his Mistake waived his Judgments, struck out the old, and gave new Rules to plead, and after they were expired, signed Judgments again; and the Question was, Whether he could do so without Leave of the Court. *Per Cur'*: It is only one Entry upon Record in each Cause, and the former Judgments appear by the Prothonotary's Book to be signed by Mistake, and the latter are regular. *Eyre* for Plaintiff; *Skinner* for Defendant.

Bray *against* Booth.

DEFENDANT pleaded a Tender, but brought no Money into Court; gave a Rule to reply, and for want of a Replication signed a *Non-pros*. Plaintiff looked upon the Plea as a Nullity, the Money not being brought into Court, and signed Judgment after the *Non-pros* obtained, and now moved to set aside the *Non-pros*. Defendant moved to set aside the Judgment, insisting that Plaintiff could not regularly sign Judgment till the *Non-pros* was set aside; and of that Opinion was Sir George Cooke, but the two other Prothonotaries reported the Practice contrary; and the Court was of Opinion that the *Non-pros* not being rightly obtained, Plaintiff might proceed in the same Manner as he might have done in case such *Non-pros* was not signed; and consequently the Judgment is regular, and must stand; and the *Non-pros* being irregular must be set aside. *Glyde* for Defendant; *Wright* for Plaintiff.

Lane *against* Smith. Mich. 10 Geo. 2.

AFTER Defendant had procured Time to plead by a Judge's Order, pleading an issuable Plea, he pleaded a Tender as to Part, and *Non assumpsit* as to the Residue. Plaintiff looked upon the Plea as a Nullity, and signed Judgment. It was urged that Plaintiff had taken the Plea out of the Office, which was an Acceptance of it; but *per Cur*, the Plea is a Nullity, and Judgment is regular. *Skinner* for Defendant; *Agar* for Plaintiff.

Whitehead *against* Shaw. The same *against* Whitfield.

AJudge's Summons for Time to plead was taken out and served after the Rule for pleading expired, notwithstanding which Plaintiff's Attorney signed Judgment, which was held to be regular. A Judge's Summons regularly obtained is a Stay of Proceedings till discharged, or other Order made thereupon; but it is an Abuse upon the Judge to apply for his Summons after Rule to plead expired, when no Summons ought to be granted; and therefore this Summons unduly obtained is no Stay of Proceedings. *Wright* for Plaintiff; *Bootle* for Defendant.

Leaver

Leaver *against* Witcher. Hil. 10 Geo. 2.

Plaintiff having regularly signed Judgment, Defendant obtained a Rule to set it aside on Payment of Costs, pleading an issuable Plea, &c. Defendant afterwards pleaded the Statute of Limitation, and Plaintiff moved to set the Plea aside. A Rule was granted to shew Cause, and made absolute. The Court never give Leave to plead this Plea after a regular Judgment signed. Defendant must be bound to plead the General Issue, unless in Case of a fair and honest Defence, where a Justification is absolutely necessary. *Hawkins* and *Wright* for Plaintiff; *Draper* for Defendant.

Rolt *against* Way. Easter 10 Geo. 2.

Plaintiff's Attorney sent a Copy of the Issue to the Chambers of Defendant's Attorney in *Clifford's Inn*, on a *Friday*, when Defendant's Attorney and his Clerk were in *Southwark* attending the *Marshal's Court*. The Porter of the Inn was left in the Chambers, to whom the Issue-Book was tendered, and the Money charged thereon demanded, and he not paying the same, Judgment was signed, which was held regular, but was set aside on Payment of Costs, &c. Attornies must leave proper Persons at their Chambers to do their Business in their Absence. *Skinner* for Defendant; *Comyns* for Plaintiff.

Fen, on the Demise of Sawell, *against* Jolly and others.

In Ejectionment. **D**efendants appeared, pleaded and entered into the common Rule by Consent, but their Attorney neglecting to pay for the Issue-Book, Judgment was signed *against Den* the Casual Ejector. This Judgment was set aside as irregular. Plaintiff might have signed Judgment *against* Defendants, who had appeared, for Non-payment of the Money for the Issue-Book, but not *against* the Casual Ejector. *Chapple* and *Umlin* for Defendant; *Prime* for Plaintiff.

Ottiwell *against* D'Aeth. Trin. 10 & 11 Geo. 2.

AFTER Rule to plead expired, Defendant obtained and served a Judge's Summons for Time to plead. Plaintiff's Attorney notwithstanding the Summons, signed Judgment. Defendant moved to set aside the Judgment, and on shewing Cause the Court held the Judgment to be regular. A Summons for Time after Rule to plead expired is not a *Superfedeas* or Stay of Proceedings. The Judge was imposed upon, he would not have granted the Summons, had he known the Rule was out. The Judgment is regular, but was set aside on Payment of Costs, pleading the General Issue, and taking short Notice of Trial. *Price* for Defendant; *Belfield* for Plaintiff.

Simpson *against* Daffield, Administrator, on Bond.
Mich. 11 Geo. 2.

DEclaration was delivered with Blanks, and Rule to plead given October 24. The 26th Blanks were filled up, and Defendant at the same Time demanded Oyer of the Bond. The 27th at Eight in the Evening Oyer was given, and Plea demanded, and 28th Judgment was signed, which was held irregular, and set aside. Defendant ought to have the same Time to plead after Oyer given as remained unexpired of the Rule to plead at the Time of Oyer demanded. *Agar* for Defendant; *Skinner* for Plaintiff.

Lovel *against* Dyer.

DEfendant before last Assizes obtained a Judge's Order for Time to plead, pleading an issuable Plea, and taking short Notice of Trial, but did not plead to Issue, and for want thereof Plaintiff signed Judgment. Defendant moved to set aside the Judgment, pleading to Issue, and paying Costs, and obtained a Rule to shew Cause, which was discharged, Plaintiff having lost the Benefit of last Assizes. *Draper* for Plaintiff; *Gapper* for Defendant.

Craven *against* Hanley.

THIS was an Action of Trespafs, whereto Defendant pleaded a bad Justification. Plaintiff took Issue, and Defendant obtained a Verdict. Plaintiff moved an Arrest of Judgment, and the Court heard Counsel on both Sides several Times, and took Time to consider, and in *Easter* Term last made a Rule to stay the Entry of Judgment on Defendant's Verdict, and that Plaintiff should have Leave to sign Judgment, the Trespafs being confessed by the Plea. Pending the Consideration of the Court, Defendant died, and last Term Plaintiff obtained a Rule for Defendant's Executor to shew Cause why he should not enter Judgment *nunc pro tunc*, which Rule was made absolute. It was urged for Defendant's Executor, that Plaintiff hath delayed himself. He was to blame in joining an immaterial Issue; but *per Cur'*, the Party must not suffer by the Court's taking Time to consider. *Eyre* for Plaintiff; *Parker* for Executor of Defendant. *Baller against Delander, Trin. 1 Geo. in B. R. Taylor against Mathews, Hil. 2 Geo. in B. R.*

Browne *against* Godfrey.

Defendant's Attorney took out a Summons from Mr. Justice *Fortescue* for Time to plead in the Beginning of *Trinity* Vacation last, and attended thereon. Plaintiff's Attorney did not attend, and before the Summons was renewed or discharged signed Judgment. Defendant's Attorney offered to plead issuably, and take Notice of Trial Time enough for Plaintiff to have tried his Cause at last Assizes; but Plaintiff refused to accept the Plea, and insisted on his Judgment. *Per Cur'*: The Judgment signed without discharging the Summons is irregular, and must be set aside. *Eyre* for Defendant; *Parker* for Plaintiff.

Grimes *against* Cleaver.

HELD *per Cur'*, that though Judgment be irregular, Defendant cannot move to set it aside, unless the Motion be made two Days before the Day appointed for the Execution of the Writ of Inquiry

quiry of Damages, (according to the Report of Prothonotary *Thomson*, who quoted *Smith* against *Jenks*, *Hil. 5. Geo. 2.*) the Irregularity complained of being a Defect in the Notice of Declaration served on Defendant, after Appearance entered by Plaintiff according to the Statute.

If the Irregularity be in the Notice subscribed to the Copy of Process, the Motion must be made before Judgment signed; if in the Notice of Declaration, two Days before the Time appointed for the Execution of the Writ of Inquiry.

Prudhoe against Armstrong. Hil. 11 Geo. 2.

DEfendant prevailed to set aside a regular Judgment on Payment of Costs; and pressed to be let in to plead a Special Justification; but Plaintiff having been delayed an Assizes, the Court confined Defendant to plead the General Issue.

Roundell against Powell.

BOOTLE moved for Leave to enter Judgment upon an old Warrant of Attorney, on Affidavit that Defendant, who resided at *Jamaica*, was living and in good Health, and had been seen and conversed with there by the Person who made the Affidavit on 13th September last. He sailed from *Jamaica* very soon afterwards, and arrived at *London* 15th January following. Motion was granted.

Wallace against Willington.

STILLINGFLEET, Agent for *Worrall*, Plaintiff's Attorney, gave *Wilmot*, Defendant's Agent, Time to plead; after which *Worrall* comes to Town himself, calls upon *Wilmot* for a Plea, and for want thereof signs Judgment before the Time given by *Stillingfleet* was expired. This Judgment was held irregular, and set aside; all Matters of this Sort are to be transacted by the Agents in Town, and not by Country Attornies. *Bootle* for Defendant; *Birch* for Plaintiff.

Stafford *against* Little.

THIS was an Action upon the Case on a Promissory Note, whereto Defendant pleaded *Nil debet*; Plaintiff looked on the Plea as a Nullity, and signed Judgment for want of a Plea; which the Court held to be regular.

Evans *against* Tillam.

C*apias ret' Oñab' Hilar'*. Declaration left in the Office January 23, and Rule to plead given; the 30th Plaintiff entered Appearance by Affidavit, and 31st signed Judgment. The Objection to the Regularity of the Judgment was, that no Indorsement was made on the Copy of the Declaration left in the Office, signifying that it was left conditionally, or *de bene esse*. Judgment set aside without Costs.

Osborne *against* Haddock. Easter 11 Geo. 2.

MOTION made by *Skinner* against Judgment for Plaintiff upon the Issue of *Nul tiel Record*. The Case was Plaintiff had mistaken *Commorancy* in his Declaration: Defendant had pleaded in Abatement, and annexed Affidavit of the Truth of his Plea, Plaintiff brought a new Action, and Defendant pleaded the former Action depending, upon which Plaintiff of his own Head, without Leave of the Court, entered a *Nil capiat per breve*. The Officers were asked their Opinions, who all agreed it to be constant Practice, and the Court allowed it: But then another Question arose, Whether Plaintiff could have made such an Entry in Case the first Plea had not been in Abatement. *Borrett* and *Thomson* said it was confined to Abatement; but *Cooke* thought it might be in all Cases. The Court said it was impossible to be so, and held it confined to Abatement. *Skinner* and *Agar* for Defendant; *Drazer* for Plaintiff.

The King *against* Firebrace, Bart. and others, in Deceit, for suffering a Common Recovery of Lands in Havering atte-bower Com' Essex, being Ancient Demesne, whereof the King is now seised. Mich. 12 Geo. 2.

Defendants confess the Action, and the King's Attorney remits the Damages, and prays Judgment, as appears by the Record now read. *Comyns* moved *ex parte Regis* for Judgment, and the Court gave Judgment *Nisi Causa*; and no Cause being shewn, Judgment was entered. The same Case Mich. 3 Geo. 2. *The King against Comyns*.

Darlow *against* the late Duke of Wharton. Hil. 12. Geo. 2.

MOTION by *Agar* to enter Satisfaction on the Record of Judgment in Plaintiff's Name, *nunc pro tunc*, Plaintiff being dead, after executing a Warrant of Attorney to acknowledge Satisfaction, and his Administrator become Lunatick, as appeared by the Affidavit of a Physician, who attended her. The Court made a Rule upon the late Duke's Trustees to shew Cause, which on Affidavit of Service was made absolute.

The King *against* Willis.

Defendant was reported to have fully answered some of the Interrogatories, and to be in Contempt as to others; and being brought into Court to receive Judgment, the Question was, Whether all the Affidavits in a Cause, *Lane against Jones*, containing the whole Charge against Defendant, ought to be now read, or only such of them as relate to that Part of the Charge, which Defendant, on his Examination, hath not fully answered. The three Prothonotaries reported, that Defendant being in Contempt, his Examination goes for nothing, and Affidavits containing the whole Charge were read.

Webb,

Webb, Administrator of Russell, *against* Spurrell.
Easter 12 Geo. 2.

THIS was an Action of Debt on Judgment, and *Nul tiel Record* pleaded. The Case was, Action between *Russell* against *Spurrell* tried *Trin. 10 Geo. 2. 1736*, and final Judgment signed on the *Postea* that Vacation, viz. *October 19*, when the *Postea* was taken away by Plaintiff's Attorney, and not brought back to the Office to have the Judgment entered 'till a few Days before the Motion. It appeared by Affidavit, that *Russell* died in *August 1736*. And *Draper* for Defendant moved upon Stat. 18 Car. 2. cap. 8. to stay the Entry of Judgment, Plaintiff's Representative being bound by the said Statute to enter it within two Terms after Plaintiff's Death, and this Judgment is not entered yet. Rule obtained to shew Cause. *Prime* for Plaintiff urged, that the Fee to the Clerk of the Judgments for entering Judgment was paid at the Time of signing, and the Party may have the Entry made at any Time; that the Judgment must be looked upon as actually entered from the Time of Signing. The Rule enlarged. *Per Cur'*: This Practice may be of dangerous Consequence. Purchasers, &c. should not be put to search Prothonotaries Books for Minutes of Judgments signed, it ought to be sufficient for them to have Recourse to the Record. Let a General Rule be drawn up, that after the first Day of next Term all *Posteas* and Inquisitions, whereon final Judgments are signed, be left with the Prothonotaries in order that the Judgments may be immediately entered.

Turner *against* Williams.

Defendant pleaded by an Attorney of another Court, and Plaintiff looking upon the Plea a Nullity, sign'd Judgment, which was held to be regular; and the Rule to shew Cause why the Judgment should not be set aside was discharged. *Belfield* for Plaintiff; *Hayward* for Defendant.

Wentworth, Bart. *against* Hustler, Widow. Trin. 13
Geo. 2.

In Waste. **P** Laintiff gave a common Rule to plead, and at the Expiration thereof, without giving a peremptory Rule, signed Judgment. Defendant moved to set the Judgment aside, insisting that a peremptory Rule ought to have been given as in a Real Action; and of this Opinion were the Court. The Place wasted, as well as Damages, being to be recovered in the Action by the Statute of *Glouc'*, cap. 5. In Mixed Actions a peremptory Rule is necessary, as well as in Real Actions (except Replevin) and the Judgment was set aside without Costs. *Draper* for Tenant; *Skinner* for Demandant.

Cruse against Williams, Administrator. Hil. 13 Geo. 2.

A Regular Judgment was set aside upon Payment of Costs, (Plaintiff not having been delayed of a Trial) and pleading *Plene administravit*, which (Defendant being an Administrator) was deemed as the General Issue. *Hussey* for Defendant; *Belfield* for Plaintiff.

Curd against Eastmead.

In Ejectment. **C** AUSE tried at Summer Assizes, 1739, in Kent, Oct. 27 ult. Defendant allowed a Writ of Error, and served Plaintiff's Attorney with Notice of the Allowance. Writ of Error returnable 15 Martini. Judgment not signed till after the Return, viz. Dec. 26. and then Plaintiff takes Possession. The Writ of *Habere facias possessionem* was held to be irregular, and was set aside, and Possession ordered to be restored. Plaintiff's Attorney ordered to pay Costs, and by Consent no Action to be brought; the Judgment being of Michaelmas Term is affected by the Writ of Error. *Eyre* for Plaintiff; *Agar* for Defendant.

Webb *against* Spurrell. Trinity 13 & 14 Geo. 2. *Helia Fisher
1. idem. 30s.*

Plaintiff recovered a Verdict, and after the Trial, and before Final Judgment signed, died intestate. Plaintiff's Administrator caused Final Judgment to be signed 19th October 1736, which was within two Terms after the Verdict, but the Roll was not brought into the Office, nor entered upon Record; after the two Terms lapsed, Defendant left a Caveat with the Clerk of Essoigns, against receiving this Roll; and an Action of Debt being brought by Plaintiff's Administrator on the Judgment, Draper for Defendant moved to stay the Entry of Judgment, the same not having been entered within two Terms, according to the Statute 17 Car. 2. cap. 8. and obtained a Rule to shew Cause; which upon hearing *Prime* for the Plaintiff, was discharged, without Costs on either Side. *Per Cur'*: The Practice of not bringing Rolls into the Office within due Time is very inconvenient, and must be remedied by a new General Rule. In this Case, the signing must be considered as the Entry; the Fee for entering the Final Judgment was paid to the Clerk of the Judgments at the Time it was signed; the Roll must be received and filed *nunc pro tunc*.

Wait, an Attorney, *against* Garth.

Judgment was signed of Hilary Term 1733, but, by Omission of Plaintiff's Agent, the Roll was not docketted and carried into the Office till 29 June 1737; and the true Day of docketting was marked upon the Docket by the Clerk of the Essoigns. Milner, who pretended to be a Purchaser of Defendant's Estate for a valuable Consideration, on 19 Jan. 1736, without Notice of this Judgment, moved, and had a Rule for Plaintiff to shew Cause why the Docket should not be set aside as void by the Statute 4 & 5 W. & M. cap. 20. Upon shewing Cause it appeared, that the Judgment was for a Debt *bona fide*, and that the Roll was accidentally mislaid, and omitted to be carried in, the true Time of docketting appeared to be plainly and fairly entered, without Fraud; and an *Elegit* upon this Judgment appeared to be executed in 1735; and that Milner had Notice thereof, who seemed, upon the Affidavits, to be a colourable Purchaser to assist Defendant. *Per Cur'*: The true Time of docketting not

being concealed, and no Fraud appearing on the Part of the Plaintiff, We will not interpose; *Milner* may bring his Ejectment, and take what Advantage he can. It appeared that *Milner* had not made any Search for Judgments against Defendant till after his Purchase. The Rule was discharged. *Prime* and *Bootle* for Plaintiff; *Birch* and *Agar* for *Milner*.

Note; *Milner* having brought his Ejectment before this Motion came on, the Cause was tried at *York* at the Summer Assizes 1740, before Mr. Justice *Parker*; when *Wait*, who was in Possession, set up the above judgment, in Opposition to *Milner's* Title; but *Milner* proving, by the Clerk to the Clerk of the Essoigns, that the Judgment-Roll was not carried in to the Clerk of the Essoigns and docketed till 29th *June* 1737, and the Purchase-Deeds being executed 18th & 19th *January* 1736, the Judge of Assizes determined, That the Judgment, by Reason of it's not being docketed antecedent to the Purchase-Deeds, was no Bar to *Milner's* Title: Therefore a Verdict was found for Plaintiff,

: *Fowler against Whadcock*, Easter 14 Geo. 2.

A Rule was obtained by Plaintiff to shew Cause why Judgment should not be entered *nunc pro tunc*. The Cause was tried in *London* at the Sitting after *Trinity* Term 7 & 8 Geo. 2. Defendant filed a Bill in Chancery, and got an Injunction, which was dissolved 19th *May* 1740, and then Search was made among *Higham* the late Associate's Papers, but the *Poſtea* could not be then found. 21st *June* 1740 Defendant died. It appeared that the Bill in Chancery was brought in 1733, and the Answer did not come in till 1738, and a further Answer not till 1739. *Per Cur'*: By the Statute 17 *Car. 2. cap. 8*. Judgment may be entered within two Terms after the Verdict, and the Death of the Party between the Verdict and Judgment shall not be assigned for Error; but this Case is not within that Statute; and the Delay is purely the Plaintiff's, and not occasioned by the Court. Let the Rule be discharged. *Draper* for *Humphry Whadcock*, Heir and Executor of Defendant; *Bootle* for Plaintiff.

Gardner *against* Goodall.

JUDgment was signed for Want of paying for the Issue-Book, and Defendant had a Rule to shew Cause why the Judgment should not be set aside. Upon shewing Cause it appeared, that Plaintiff had charged and demanded for the Issue-Book 6 s. 8 d. more than was due. The Court were clearly of Opinion, that the old Doctrine, that Defendants must pay whatever was demanded for Paper-Books, ought to be exploded; it is sufficient if they are ready to pay what is due. Let the Judgment be set aside, without Costs, Defendant taking short Notice of Trial for the third Sitting. *Urin* for Defendant; *Belfield* for Plaintiff.

Wagstaffe *against* Long, an Attorney. Mich. 15
Geo. 2.

DEFendant, bound by a Judge's Order to plead an issuable Plea, pleaded that Plaintiff was an Infant, and ought to sue by *Prochien Amy*, and not by Attorney. Plaintiff looked upon this Plea as a Nullity, and signed Judgment. *Hayward*, for Defendant, moved to set the Judgment aside. But the Court refused to make any Rule, being of Opinion that this is a Plea in Abatement, and consequently null and void. The Judgment is regular, and Plaintiff was not obliged to apply to the Court to set aside the Plea. An issuable Plea is a Plea in chief, upon which Plaintiff may take Issue.

Longman *against* Rogers.

THIS was an Action of Debt on Bond. Defendant craved Oyer and a Copy of the Bond and Condition, and had the same, but without the Witnesses Names, or a Copy of an Agreement subscribed to the Condition. Plaintiff signed Judgment for Want of a Plea, and Defendant moved to set the same aside; insisting, that he was intitled to a more perfect Copy, with Witnesses Names, &c. The Practice was reported to be, that Defendant was intitled to Oyer of no more than the Bond and Condition, and not the Witnesses Names, &c. But *per Cur'*: That Practice is unreasonable, and must be altered. After a *Profert* of a Deed, it is con-

sidered as in Court, and it may be material for the Party's Defence to inspect the same, and take a Copy of the Whole, with Witnesses Names, and all Memorandums subscribed or indorsed, which he has a Right to. Anciently the Witnesses were Parties to the Deed, and were incorporated with the Jury to try the Deed. Let the Judgment be set aside, without Costs. Let Defendant have a Complot Oyer,' and a Copy of the Deed and Witnesses, &c. and plead an issuable Plea. It was objected, that *Milton*, Defendant's Attorney, who signed the Notice of Motion, was a Prisoner in the *Fleet*, and consequently the Notice, &c. void. But *per Cur'* : The late Act of Parliament disqualifying Attornies who are Prisoners from practising, relates only to prosecuting, and not to defending Suits. *Wynne* for Defendant; *Skinner* for Plaintiff.

Buckle *against* Lucas, Administrator.

Judgment was signed as quickly as could be, and strictly regular, but was set aside on Payment of Costs; and Defendant had Leave to plead two Bonds, and *Plene administravit præter*. *Drazer* for Defendant; *Prime* for Plaintiff.

Hopkins *against* Knapp, an Attorney.

THIS was an Action on the Case *super Assumption'*, and after Issue joined on *Nul tiel Record*, Plaintiff's Attorney delivered the Book, and gave Defendant a Day to bring into Court the Record by him averred, (*viz.*) *Monday* next after eight Days of *St. Martin*; and the Record not being brought in that Day, Plaintiff drew up a Rule for Judgment, unless Cause, on *Wednesday* next; signed Judgment, and executed a Writ of Inquiry of Damages. Defendant objected to the Judgment, that the Rule should have been, unless Cause within four Days, and not for a shorter Time. *Per Cur'* : Where the Judgment is final, the Rule should be, unless Cause within four Days, that Defendant may have that Time to move in Arrest of Judgment; but where the Judgment is interlocutory, (as in this Case) that Reason fails, and there is no Occasion for a four Days Rule; because Defendant may move in Arrest of Judgment after the Inquiry executed. Where the Proceeding is by Original, and a general Return Day is given to bring in the Record, the Defendant

Defendant ought to be called to bring in the Record at the Rising of the Court that Day ; and if he fail, the Rule for Judgment should be, unless Cause on the Appearance Day of that general Return, and the Record may be brought in on that, or any intervening Day ; but here, where the Proceeding is by Bill against an Attorney, and the Day given to bring in the Record is a Day certain, the Record cannot be brought in after that Day ; but on that Day, at the Rising of the Court, Defendant ought to be called to bring in the Record ; and if he fail, the Court will appoint the Day to be inserted in the Rule for Judgment *Nisi Causa*. The Rule drawn up for Judgment *Nisi* was held good, and the Objection to the Judgment over-ruled.

Defendant objected to the Writ of Inquiry, that it was executed on less than fourteen Days Notice, though he lived above forty Miles from *London* ; and this Objection being valid, the Inquiry, and Inquisition taken thereon, were set aside. Defendant's being an Attorney, and supposed to be present in Court, makes no Difference, the Place of his actual Residence being at *Abingdon*, above forty Miles from *London*. *Skinner* for Defendant ; *Booth* for Plaintiff.

Smithson *against* Broughton, an Attorney. Trinity
16 Geo. 2.

UPON an Attendance of the Attornies on both Sides 2d *June*, a Judge's Order was made, by Consent, for nine Days Time to plead ; on 12th *June* Defendant obtained and served a Summons for further Time to plead ; and after such Service, which was before Noon, Plaintiff's Agent signed Judgment ; insisting, that the Summons for further Time, taken out after the Expiration of the Time to plead given by the Order, was a Nullity. This Judgment may be strictly regular ; but it is quick Practice in Plaintiff's Agent. The Summons was served before he could regularly sign his Judgment, which he could not do till the Opening of the Prothonotary Office in the Afternoon of the 12th *June*. The Judgment was ordered to be set aside, and Defendant to plead an issuable Plea, and take Notice of Trial within Term.

Northern,

Northern, Administrator, *against* Oliver.

ON the 1st *December* 1741 Plaintiff's Intestate died, and on the 6th of same *December* Interlocutory Judgment was signed of the *Michaelmas* Term preceding; Defendant moved to set aside the Judgment and the subsequent Proceeding by *Sci. fa.* thereupon. Upon shewing Cause, the Court were of Opinion, that the Roll having been filed before the *Essoign Day* of *Hilary* Term, the Judgment is good by Relation, though the Party was dead before the actual Signing, especially as it is only Interlocutory, and no Day of signing is required to be set to it. *Oades* against *Woodward, Salk.* 87. And the Rule to shew Cause why the Judgment, &c. should not be set aside, was discharged. *Wynne* for Defendant; *Draper* for Plaintiff.

Southerton, an Attorney, *against* Greenfield. Mich.
16 Geo. 2.

AFTER a Judge's Order for two Days further Time to plead, Plaintiff, on the third Day before Noon, signed Judgment, ten Days before the End of last Term. Defendant did not move then, nor till after Delay of Trial in *Middlesex*, and Writ of Inquiry executed. *Per Cur'*: The Judge's Order is an Enlargement of the Time to plead, and Judgment could not be regularly signed till the Third Day in the Afternoon: But in this Case, Defendant's Application comes too late. The Rule to shew Cause why the Judgment should not be set aside, was discharged. *Prime* for Plaintiff; *Draper* for Defendant.

Broadbent *against* Wilks.

VERDICT for Defendant on two Issues joined upon Not guilty, and a Justification. By the Special Plea the Trespass was confessed; Judgment was ordered to be entered for the Plaintiff, notwithstanding the Verdict, the Trespass being confessed by the Special Plea. The true Method is, not to stay the Entry of Judgment upon the Verdict by Rule, but to enter the Verdict upon
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Record,

Record, and then Judgment for the Plaintiff, *non obstante Verdicto*.
Prime and *Agar* for Plaintiff; *Bootle* for Defendant.

Ford and Ford *against* Odam. Easter 16 Geo. 2.

Defendant, an Infant, put in a Parol Demurrer, without any Affidavit of the Infancy; Plaintiff looked upon it as a Nullity; and signed Judgment. The Court held this to be no Plea, either in Bar or Abatement, but properly a Demurrer; and that an Affidavit is not requisite. The Judgment was set aside. Plaintiffs may reply Full Age, if they think fit. *Draper* for Defendant; *Belfield* for Plaintiffs.

Gylbert *against* Gylbert, in Debt on Bond; The Same *against* The Same, in Case.

Declarations were delivered, and Pleas demanded, in the Country; and Oyer and a Copy of the Bond demanded, and a Copy given there last Term; and Judgments being signed for Want of Pleas, Defendant moved and obtained a Rule to shew Cause, why the Proceedings should not be set aside; insisting, that the Delivery of the Declarations, &c. in the Country were irregular, and ought to have been transacted in Town; but the Court held otherwise. It is settled, that Notice of Trial and of the Execution of a Writ of Inquiry of Damages, may be given in the Country. Every Thing that depends upon Practice may be varied, but not the Law. Defendant's Attorney accepted the Declarations, demanded Oyer of the Bond, and was contented with a Copy in the Country. The Rule was discharged. *Skinner* for Defendant; *Belfield* for Plaintiff.

Hall *against* Morfe. Trinity 16 & 17 Geo. 2.

Defendant died 16th *February*, and Judgment signed the 21st; Plaintiff revived the Judgment by *Sci. fa.* against Defendant's Administrator, and after two *Nichils* returned, Execution was awarded. The Court held, That all Judgments must be taken to be pronounced in Term-Time; and that signing Judgment in the Vacation

Goodtitle *against* Notitle, on the Demise of Brymer and others, in Ejectment. Easter 19 Geo. 2.

THE Agent for the Tenants in Possession entered their Appearance with the Filazer, entered into the common Rule, and sent a Note to Plaintiff's Agent, That Defendants pleaded Not guilty. Plaintiff's Agent signed Judgment for Want of a Plea in Form. The Counsel for the Tenants submitted to the Court, That according to Words of the Rule for Judgment against the Casual Ejector, unless the Tenants appear, a new Declaration against the Tenants should in Strictness have been delivered before a Plea in Form could be required. Judgment set aside, without Costs. *Skinner* and *Willes* for Defendant; *Prime* and *Bootle* for Plaintiff.

Savile against Wiltshire.

DEFENDANT died 20th *April*, on the 21st *April* Application was made on Affidavit from *Essex*, sworn 19th *April*, for Leave to enter Judgment on an old Warrant of Attorney; Rule made and Judgment signed the 21st *April*. Motion by Executors of Defendant to set aside the Judgment. Defendant being dead before the Rule made and Judgment signed. Rule to shew Cause. If it had appeared to the Court that Defendant was dead, Leave had not been given to enter Judgment, but *Quod fieri non debuit factum valet*. Here is no Imposition on the Court. No Difference between a Warrant of Attorney under or above a Year old, save that if under, Judgment may be entered without, if above; not without Leave of the Court. The Judgment when signed relates to the Essoign Day of the present or preceding Term. Cases are uniform. The Court will adhere to Fictions and Relations when they tend to promote Justice. The old Practice is altered by Act of Parliament, as to Lands only, with Respect to the Time from which Judgments are to affect Purchasers. *Fuller against Jocelin* in *B. R.* Mich. 4 Geo. 2. *Chauncy against Needham, Viner*, Tide Judgment, 17 Geo. 2. *B. R.*

Maurice *against* Engier. Mich. 20 Geo. 2.

Defendant obtained a Judge's Order for Time to plead, pleading an issuable Plea, rejoining *gratis*, and taking Notice of Trial within Term. Defendant pleaded accordingly, and Plaintiff replied; and then Defendant, instead of rejoining, demurred, merely for Delay. Plaintiff not having Time to set down the Demurrer to be argued within Term, signed Judgment. Defendant moved to set aside the Judgment, and a Rule was made to shew Cause. Upon hearing Counsel on both Sides, the Court thought Defendant's Practice a meer Trick, and discharged the Rule. By rejoining *gratis* is meant, rejoining without the common four Days Rule to rejoin. *Boote* for Defendant; *Draper* for Plaintiff.

Randle *against* Warr and others. Hilary 20 Geo. 2.

IT appearing to the Court, that Defendants set up a fair Defence, which they could not have the Benefit of under the General Issue. The Judgment, which was regular, was set aside, on Payment of Costs, and pleading an issuable Plea, without confining Defendants to the General Issue; which, for the particular Reasons offered in this Case would signify nothing. *Wynne* for Defendants; *Skinner* for Plaintiff.

Swinley *against* Woodhouse, Clerk, in Debt on Bond.
Mich. 21 Geo. 2.

Defendant superseded the *Exigent*, which was returnable *Tres Mich.* Plaintiff delivered a Declaration, laying his Action in *London*, without Notice to plead indorsed, gave a Rule to plead, and for Want of a Plea within four Days, signed Judgment. Defendant objected the Want of Notice to plead indorsed on the Declaration, pursuant to General Rule *Easter* 3 Geo. 2. relating to all Process returnable the first or second Return of any Term. Defendant also insisted, That as he lived above twenty Miles from *London*, he was intitled to eight Days Time to plead, by General Rule *Mich.* 3 Geo. 2.

It was urged for the Plaintiff, That these Rules relate to Process
of

of *Capias*, &c. *ad respondendum*, and not to an *Exigent*. That after a Defendant had stood out the common Process of *Capias*, *Alias* and *Pluries*, and came not in till the Return of the *Exigent*, he was always, by the ancient Course of the Court, obliged to take a Declaration, and plead the same Term, without Imparlance, or more Time to plead than given by the common Rule. *Vide Praxis utriusque Banci, Bancus Communis, fol. 8.* That these Rules were intended to forward Plaintiffs in common Cases, and not to delay them, where Defendants could not be brought into Court on the ordinary Process. The Words of the Rules being general, and extending to all Process returnable the first or second Return, without Exception as to an *Exigent*, or any other particular Process, the Court ordered the Judgment to be set aside, without Costs. *Prime* for Defendants; *Skinner* for Plaintiffs.

Chapman *against* Cattern, otherwise Catterns.

AFTER Judgment, and Notice of executing a Writ of Inquiry of Damages, Defendant in *November* moved to set aside the Proceedings; objecting, that though the Act to prevent vexatious Arrests expired 1st *June* last, Plaintiff, by Virtue of an Affidavit of Service of the Process, sworn before the Filazer's Deputy 19th *October* last, had that Day entered an Appearance. That the Affidavit was *coram non Judice*, and the Appearance void. On shewing Cause by the Plaintiff, it appeared that the Writ was served in last *May*, returnable of *Easter* Term; that on Service, Defendant paid Part of the Debt and Costs, and Plaintiff gave him Time to pay the Residue; and did not renew the Proceedings till after that Time expired, and Default made. *Per Cur'*: The Application might have been made the first Day of the Term, it seems now to come too late. The Time was enlarged at Defendant's Request, and now he would take Advantage of it. This looks like a Trick to evade Justice. The Appearance may be looked on as entered at the Return of the Writ (as recorded) *nunc pro tunc*, the Affidavit is not taken before a Person having proper Authority, but it is very late to inquire into that Matter now. Proposal to pay the Residue of Debt and Costs, including the Costs of the Judgment, but not of the Motions, agreed to by Defendant; and thereupon Proceedings stayed. *Agar* for Defendant; *Bootle* for Plaintiff.

Russell *against* Martin.

CAPIAS returnable 15th *Trinity*, Plaintiff appeared for Defendant 15 *July*, gave Notice of a Declaration, and for Want of a Plea signed Judgment, and 10th *November* gave Notice of executing a Writ of Inquiry. 18th *November* Defendant moved to set aside the Proceedings, insisting, that the Appearance was a Nullity. The Court thought, that the Application ought to have been made in the first Instance. By Consent Judgment set aside, without Costs, Defendant to appear *nunc pro tunc*, plead an issuable Plea, and take Notice of Trial for the Sitting after Term. *Skinner* for Defendant; *Draper* for Plaintiff.

Wilcox *against* Sharpe, in Covenant. Mich. 22 Geo. 2.

Defendant had pleaded three Pleas by Leave of the Court; Plaintiff afterwards got an Order to amend his Declaration, on Payment of Costs, in the Taxation whereof the Costs of the Pleas were not insisted on, or allowed. Plaintiff paid the Costs taxed, gave a new Rule, and demanded a Plea; whereupon Defendant's Attorney re-delivered the former Pleas, without second Application to Counsel or the Court. Plaintiff signed Judgment for Want of new Pleas. After an Amendment of a Declaration, Defendant has Liberty to plead *de novo*, that is, may do so if he has Occasion, or thinks proper, but he is not obliged to vary his first Defence. Rule absolute to set aside the Judgment. *Willes* for Plaintiff; *Bootle* for Defendant.

Hodges *against* Charley, Spinster, Executrix. Easter 22 Geo. 2.

Judgment signed for Want of a Rejoinder. Time had been given by Plaintiff's to Defendant's Agent to rejoin till *Wednesday*; on *Thursday*, three Days after Rule out, Summons for Time served held to be no Stay of Proceedings. Judgment regular set aside on Payment of Costs, and rejoining immediately. *Skinner* for Defendant; *Prime* for Plaintiff.

Cooke *against* Dethick and another, in Replevin.
Easter 23 Geo. 2.

THE Plaintiff brought a *Re. fa. la.* returnable in *Michaelmas* last, and a *Pone* returnable 8 *Hilary* last, whereon Defendants appeared, and Plaintiff delivered a Declaration 8th *February* last, intituled of *Michaelmas* instead of *Hilary* Term; and for Want of a Plea signed Judgment, and executed a Writ of Inquiry of Damages last Vacation, upon two Notices thereof, directed to Defendant *Dethick* and the other Defendant respectively, and both left at the House of *Dethick*. Defendant insisted, that he was intituled to an Imparlance; but that Question was not entered into. The Court held the Declaration intituled of *Michaelmas* Term to be null and void. Rule absolute to set aside the Judgment and Inquiry, Costs to attend Event of Trial. *Poole* for Defendants; *Willes* for Plaintiff.

Turton *against* Rishton. Trinity 24 Geo. 2.

ON an Issue of *Nul tiel Record* joined in an Action of Debt on Judgment, wherein Plaintiff had declared for 95 *l.* adjudged to him for Damages, occasioned by Non-performance of Promises and Undertakings, &c. Plaintiff produced a Record of the Judgment to verify his Declaration, whereupon it was objected by *Prime* for Defendant, that the Record produced contains a Recovery of 95 *l.* Part for Damages, and the Residue for Costs, and the Record alledged is a Recovery for Damages only. But the Objection was over-ruled, and Judgment given for the Plaintiff. The Declaration is in the settled constant Form of this Court, used in such Declarations and in Writs of *Scire facias* to revive Judgments. After the Costs incorporated with and made Part of the Damages, the Conclusion of the Judgment is, Which said Damages amount in the Whole to 95 *l.* The Form of the *King's Bench* differs from that of this Court. The Precedents are uniform, and joined to the Reason of the Thing, must prevail. *Brown's Modus intrandi* 157. *Officina Brevium* 283. *Bootle* for Plaintiff.

Dean *against* Unwin, one, &c.

MORE Money was charged on the Issue-Book than due, *viz.* 2 s. 4 d. for a second Copy of the Declaration, which was of the same Term with the Issue; and Defendant refusing to pay for the Issue, Plaintiff signed Judgment. The Court held it necessary that Defendant should tender the Sum due, and for Want of such Tender discharged the Rule to shew Cause why the Judgment should not be set aside. *Poole* for Plaintiff; *Hayward* for Defendant.

Ouldham and another *against* Lee. Trinity 24 & 25
Geo. 2.

Judgment signed for Non-payment of Money due for an Issue-Book, tendered at the House of Defendant's Attorney twice, at proper Hours, though not left there, held to be regular, and Rule to shew Cause why the Judgment should not be set aside discharged. *Prime* for Plaintiff; *Willes* for Defendant.

Bickerton *against* Lewis.

AFTER an Appearance entered for Defendant by Plaintiff, according to the Statute, the Clerk of Defendant's Agent took the Declaration out of the Office, and the Clerk of Plaintiff's Agent had Notice thereof; and, as the Clerk of Defendant's Agent swore, undertook not to sign Judgment without calling for a Plea; notwithstanding which, Judgment was signed without such Calling. The Clerk of Plaintiff's Agent denied the Undertaking. The Court thought the Judgment not fair, though regular; and made the Rule absolute for setting it aside, on Payment of Costs, and pleading the General Issue. *Draper* for Defendant; *Prime* for Plaintiff.

Eames *against* Jew. Mich. 25 Geo. 2.

Objection, That no Plea was demanded in Writing. Answer, That a Demand of a Plea was indorsed on the Declaration delivered. Held, That such Indorsement is insufficient. A Plea must be demanded in Writing, after Declaration delivered, and Rule to plead given. Rule absolute to set aside the Judgment, with Costs. *Willes* for Defendant; *Prims* for Plaintiff.

Hobbs *against* Greene. Easter 25 Geo. 2.

THIS was an Action of Trespas for breaking and entering Plaintiff's House, and taking and carrying away divers Quantities of China Ware, Earthen Ware and Linen, without setting forth the Particulars. Defendant suffered Judgment by Default; and after a Writ of Inquiry executed, and one Penny Damages found, Defendant moved in Arrest of Judgment, and obtained a Rule to shew Cause; objecting, and though the Writ be short, the Count should explain the Particulars of the Goods. *Playter's Case* 5 *Coke* 34. *Pikes suos cepit*, held to be uncertain, neither Number nor Kind being mentioned. *Elphick against Aston*, 1 *Vent.* 114. in *Trover de diversis Vestimentis*, bad for Uncertainty. 1 *Vent.* 272, 329. 1 *Inst.* 383. A. Dec. *Placitand.* 85, 86, 87. On shewing Cause it was answered, on the Part of Plaintiff, that in Trespas or Trover there seems to be no Occasion for great Certainty, because Damages are to be given only for what is proved, as in an *Indebitat. Assumpsit*, and this Recovery may be pleaded in Bar to a new Action. *Bourn and Wife against Matair*, in Replevin, in B. R. Lord Hardwicke Ch. Just. *Hartford against Jones*, 2 *Salk.* 654. *Harrison against Botomley*, *Trin.* 2 *Geo.* 1. *Kempton against Lampster*, *Trin.* 1 *Geo.* 1. *Rast.* 509. 1 *Keble* 184. 1 *Ld. Raymond* 588, &c. Rule discharged. *Prims* for Defendant; *Poole* for Plaintiff.

Whitehead, Administrator of Reveley, *against* Gale,
Bail for Stewart. Trin. 25 & 26 Geo. 2.

RULE made absolute to set aside the final Judgment against Defendant *Stewart*, and all the subsequent Proceedings thereon against him and his Bail. Three Objections were made in Points of Irregularity; the first to the Judgment, That it was not signed till about two Months after the Death of *Reveley* the original Plaintiff; he died (as was admitted) in *September* 1747, and the Judgment was signed in *November* following. The second, to the Revival of the Judgment *per Whitehead* the Administrator, which was by one *Scire facias* only, returned *Nichil habet*, (no new Person being called in on Defendant's Part.) The third, to the Award of Execution, not docketed till after Defendant had appeared to the *Sci. fa.* which was returnable *Ostabis Purificationis* 1748.

The Court did not think it necessary to give any Opinion as to the second and third Objections, but as to the first, they held it to be good. The Law abominates Circuity and Expence; though the Judgment be erroneous in Point of Fact, yet it may also be deemed irregular, where the Application to set it aside is recent, the Bail ought not to be put to an *Audita Querela*. The Judgment is a Nullity. Plaintiff, at the Time when it was given, could not come to demand it, and his Warrant of Attorney was extinct. *Prime* for Defendant; *Willes* and *Pool* for Plaintiff.

Machin against Delaval, Esquire.

MOTION to set aside Judgment, &c. entered by Warrant of Attorney, which Warrant Defendant insisted was void, as being given in Pursuance of an Usurious Contract, which is not pleadable to a *Scire facias* on the Judgment. Plaintiff's Counsel observed, that the pretended Usury is subsequent to the Judgment; and that Usury for Continuance does not avoid the first Security, though a Penalty of treble the Value is given by Action, &c. The Court directed an Issue to try the controverted Fact, as to the Usury. *Willes* and *Droper* for Defendant; *Prime* and *Pool* for Plaintiff.

Wood *against* Dodgson. Trinity 26 & 27 Geo. 2.

RULE to shew Cause why Judgment should not be set aside, discharged. The Objections were, that Defendant had never been served with Copy Process, or Notice of Declaration. The Answer was, that Copy of the Process had been tendered to Defendant at his House, who refusing to accept the same, it was left there; and that within 16 Days after such Service of Process, Notice of Declaration was left under the Door of said House, which was then empty and shut up. The Court thought the shutting up of the House a Trick of Defendant's to avoid Process, &c. By the General Rule 1 Geo. 2. Notice of Declaration is to be left at Defendant's last Place of Abode. *Peole* for Defendant; *Wilfen* for Plaintiff,

Bulling *against* Rogers. Mich. 27 Geo. 2.

Defendant had moved in Arrest of Judgment, and obtained the common Rule, which is, That the Entry of Judgment be stayed till the Court be moved on Behalf of the Plaintiff, and shall otherwise order; of which Motion Defendant is to have Notice,

Draper, for Plaintiff, admitted the Objection made in Point of Law, and prayed that an Entry be made on the Roll as the Adjudication of the Court, *That the Judgment be arrested*, which was ordered. The Rule leaves the Action pending pleadable in Bar to a new Action; till the Entry prayed be made, Plaintiff cannot bring a Writ of Error, or maintain a new Action. *Peole* for Defendant,

Barnard one, &c. *against* Irwin. Trin. 28 Geo. 2.

Attachment of Privilege returnable *Thursday next after 15 Hil.* a Copy whereof was served on Defendant before the Return, and on the Return Day (30 January) a Declaration was left in the Office *de bene esse*, and Notice to plead served on Defendant; Defendant by the Statute having eight Days to appear after the Return of the Writ (i. e. exclusion of the Return Day) stayed till 7 February his last Day for appearing, and then entered his Appearance, and pleaded a Tender after his Time for Pleading given by said Notice, but

but before the Rule to plead expired; Plaintiff looked upon this Plea as a Nullity, because pleaded after the *Time for Pleading* expired, and after the *Rule* to plead was out, and signed Judgment. Defendant insisted that this Plea ought to be received any Time before his *Time for appearing* expired, or any Time before Plaintiff was entitled to sign Judgment for want of a Plea. Interlocutory Judgment set aside, Costs to attend the Event of the Cause. *Prime* for Defendant; *Willes* for Plaintiff.

Money, Goods, &c. brought into Court.

Anonymous. Mich. 6 Geo 2.

PER Cur.: Money may be paid into Court upon the common Rule after Rule to plead is out, at any Time before Plea pleaded.

Knapton *against* Drew.

MOTION was made upon an Affidavit that Defendant was dead; that 10*l.* formerly paid into Court upon the common Rule, might be paid out to his Executors. Denied *per Cur.*

Bryan, Executor, *against* Holloway. Hil. 6 Geo. 2.

UPON the common Motion to bring Principal, Interest and Costs into Court, and refer to Prothonotary, the Court refused to grant the Rule, Plaintiff being an Executor; but said, Plaintiff might be willing to accept the Debt and Costs, and therefore they would grant a Rule to shew Cause.

Dixon *against* Allen. Trin. 7 & 8 Geo. 2.

Defendant moved to pay 3*l.* into Court in Debt for Rent, and plead *Nil debet*. *Per Cur'*: Be it so, it is common Practice. *Hawkins*.

Satterthwaite, and his Wife Administratrix, *against* Watford. Hil. 8 Geo. 2.

SKINNER moved to discharge a Rule to pay Money into Court, which was drawn up in common Form, without distinguishing that Plaintiffs sued as Administrators; and the Motion was granted.

Savage *against* Francklyn.

Defendant brought Money into Court upon the common Rule (Plaintiff refusing to accept the same) and pleaded the General Issue. Plaintiff joined and delivered the Issue Book, with Notice of Trial: Plaintiff did not proceed farther, but moved to have the Money out of Court, with Costs to the Time of bringing the Money into Court, which was ordered upon Plaintiff's Payment of Costs to Defendant subsequent to the Time of bringing the Money into Court.

Anonymous.

MONEY was paid into Court by Defendant upon the common Rule: Plaintiff proceeded to Trial, and recovered a smaller Sum than that paid into Court. Moved in the *Treasury*, that Defendant might have the Money out of Court towards his Costs, and ordered, upon hearing the Attornies on both Sides.

Crockay *against* Martin. Easter 9 Geo. 2.

A Sum of Money having been paid into Court by Defendant upon the common Rule; and Plaintiff dying before Trial, Defendant moved to have the Money paid back to him; but the Court were of Opinion that the Money being paid into Court for Plaintiff's Use, ought not to be paid back to Defendant. Vide *Knapton against Drew. Mich. 6 Geo. 2.* The Court have not yet gone so far as to order Payment to Plaintiff's Executor, but it seems reasonable if the Executor be willing to accept the Money paid into Court; and after Trial it is plain Executor is intitled to the Money paid into Court, though a smaller Sum be recovered; had Plaintiff lived, and refused to accept the Sum paid into Court, and been nonsuited upon the Trial, yet Defendant could not have the Money back out of Court, Plaintiff being intitled thereto in all Events, as determined in *Lane and Wilkinfon in the Treasury. Mich. 1 Geo. 2.*

[Cooke *against* Holgate. Trin. 10 G. 2.

In Trever. **D**RAPER moved for Defendant to bring the Goods specified in the Declaration into Court; but the Goods being ponderous the Motion was denied. *Per Cur'*: Let the Plaintiff shew Cause why he should not consent to accept the Goods and Costs.

Straphon *against* Thompson. Hil. 11 Geo. 2.

A Rule to pay 1*l.* 11*s.* 6*d.* into Court was discharged, the Money not having been paid in till after Plea pleaded. *Skinner* for Plaintiff; *Eyre* for Defendant.

Burgess *against* Pallamounter. Mich. 12 Geo. 2.

BELFIELD moved to set aside regular Judgment on Payment of Costs, pleading General Issue, &c. and asked for Leave to pay Money into Court on the common Rule. Denied.
Per

Per Cur': Money cannot be so brought in after regular Judgment.

White against Daman.

In Debt for Rent. **R**ULE to shew Cause why Defendant should not bring Money into Court upon the common Rule, and plead *Nil debet* made absolute. *Belfield* for Plaintiff; *Draper* for Defendant. The same Case *Dixon against Allen*, *Trin.* 7 & 8 *Geo.* 2. *Note*; The Practice is the same in Covenant for Non-payment of Rent.

Davies against Mansell, Bart. *Hill.* 13 *Geo.* 2.

DE F E N D A N T paid Money into Court upon the common Rule, which Plaintiff refused to accept, and delivered an Issue with Notice of Trial. Plaintiff afterwards declined proceeding to Trial, and moved that he might have the Money with Costs to the Time of the Rule for Payment into Court, consenting to allow Defendant subsequent Costs, and obtained a Rule to shew Cause, which was made absolute on hearing Counsel on both Sides. *Prima* for Plaintiff; *Hayward* for Defendant. *Vide Savage against Franklin*, *Hil.* 8 *Geo.* 2.

Swan against Freeman.

DE F E N D A N T last Term paid 2*l.* 12*s.* into Court upon the common Rule, which Plaintiff refused to accept, and joined Issue. This Term Defendant applies to increase the Sum, and obtains a Rule to shew Cause why the Common Rule not be altered, and the Sum made 7*l.* 12*s.* instead of 2*l.* 12*s.* The Rule to shew Cause was discharged. It is a Subterfuge to try if Plaintiff will accept a smaller Sum than due, and if not, to pay more Money into Court, which cannot be done after Issue joined. *Boote* for Plaintiff; *Agar* for Defendant.

Scarrall *against* Horton. Mich. 14 Geo. 2.

DEFENDANT paid Money into Court upon the Common Rule, which Plaintiff accepted, and after the Coſts taxed and demanded, moved for an Attachment againſt Defendant for Non-payment. The Court reſuſed the Rule; becauſe, as the Words of the Common Rule ſtand at preſent, Defendant is not ordered to pay the Coſts; but granted a Rule upon Defendant to ſhew Cauſe why he ſhould not pay Coſts; and declared, that the Form of the Common Rule ſhould be altered, and made obligatory upon Defendants to pay Coſts. *Agar* for Plaintiff.

N. B. A new Form hath been ſince ſettled accordingly.

Peirce *againſt* Sanders. Eaſter 14 Geo. 2.

THIS was an Action of Debt upon a Bill penal for 2 *l.* 2 *s.* and in the Declaration a Count was added on a *Mutuatius*. Defendant took a Rule from Secondary *Paramor*, as a Rule of Courſe, to pay 2 *l.* 2 *s.* into Court, and pleaded *Solvit ad diem* to the Bill penal, and *Nil debet* to the *Mutuatius*. Plaintiff reſuſed to accept the 2 *l.* 2 *s.* went on to Trial, and recovered 2 *l.* 2 *s.* and no more. Whereupon he applied to the Court to ſet aſide the Rule for Payment of Money into Court; and a Rule to ſhew Cauſe was granted, which, on ſhewing Cauſe, was diſcharged. *Per Cur'*: The Rule to bring Money into Court, in this Caſe, is not ſupported by any Precedent, and is certainly wrong; but Plaintiff ſhould have applied ſooner; after a Verdict in Defendant's Favour he comes too late. *Huffey* for Plaintiff; *Draper* for Defendant,

Fuller *againſt* Swan. Eaſter 14 Geo. 2.

AFTER the Plaintiff's Death, a Motion was made that his Executor might pay Defendant a Sum of Money, which the Prothonotary had reported to have been levied by Plaintiff more than was due, and a Rule granted to ſhew Cauſe; but was
after-

afterwards discharged. *Draper* for the Executors; *Willes* for Defendant.

Royden against Batty, in *Trover*. Mich. 15 Geo. 2.

DEFENDANT obtained a Rule for Plaintiff to shew Cause why, on Defendant's bringing four new wrought Dimothy Bed-Curtains, Vallance and Bases, being the Goods specified in the Declaration, into Court, and Payment of Costs, Proceedings should not be stayed; it appeared on the Part of the Plaintiff, that the Curtains had been cut, altered and scowred, and thereby lessened in Value. *Per Cur'*: These Sort of Rules are discretionary; and in this Case it is not reasonable to oblige Plaintiff to take his Goods again, altered as they appear to be. Let the Rule be discharged. *Prime* for Defendant; *Willes* for Plaintiff.

Walnouth against Houghton. Hilary 15 Geo. 2.

THIS was an Action of Covenant, in which a Breach was assigned in a Sum certain (11*l*) for not dressing Corn. *Agar*, for Defendant, moved to bring 11*l*. into Court upon the Common Rule; to which *Draper* for Plaintiff consented, admitting that this Breach is assigned with equal Certainty as for Non-payment of Rent.

Fisher against Kitchingman. Easter 16 Geo. 2.

JUDGMENT was arrested, and consequently no Costs were to be paid on either Side. The Court ordered 20*l*. brought into Court by Defendant, to be paid out to Plaintiff. *Skinner* and *Bootle* for Plaintiff; *Agar* for Defendant.

Vane against Mechell. Hilary 17 Geo. 2.

MONEY was paid into Court upon the Common Rule, which Plaintiff refused to accept, and delivered an issue; but afterwards changed his Mind, and applied to the Court for

Leave to take the Money out of Court, with Costs to the Time of bringing it in; which was ordered, upon Payment of subsequent Costs to Defendant. *Skinner* for Plaintiff; *Umlin* for Defendant.

Atkins against Taylor. Hilary 18 Geo. 2.

ACTION of Debt brought on a Bond, conditioned for a Bailiff's Good Behaviour, & *inter alia*, for his paying Money collected for the Sheriff's Use. Defendant obtained a Rule to shew Cause why he should not have Leave to bring Money into Court on the Common Rule, as to the Sums collected, and to plead Performance as to the Rest of the Condition. The Rule was discharged, as contrary to the Course of the Court. *Prime* for Defendant; *Skinner* for Plaintiff.

Yeoman against Ross. Easter 19 Geo. 2.

A Rule to pay Money into Court in an Action of Debt for the Penalty of a Charter-Party, discharged, as contrary to the Course of the Court. *Vide Atkins against Taylor, Hil. 18 Geo. 2.* *Willes* for Plaintiff; *Eyre* for Defendant.

Tidmarsh against Smith, in Covenant. Trinity 21 Geo. 2.

AFTER a regular Judgment set aside on the usual Terms of pleading the General Issue, &c. Defendant applied for Leave to bring Money into Court on the Common Rule; denied, and Rule to shew Cause discharged. After a regular Judgment, the Court never give Leave to bring in Money which comes in lieu of a Tender. *Draper* for Defendant; *Agar* for Plaintiff.

Hellier against Hallett, Widow, Administratrix, in Case, nine Counts. Trinity 21 & 22 Geo. 2.

RULE made absolute, giving Defendant Leave to pay 5*l.* 5*s.* into Court on the Common Rule, with Respect to the 7th and 8th Counts; and as to the Rest, to plead the General Issue, the Statute of Limitation, and a Set-off. This is similar to Covenant for Non-payment of Rent, where other Breaches are also assigned. If Plaintiff takes the Money out of Court, he must have Costs of the Whole to that Time. *Fawcett against Rowles, Mich. 21 Geo. 2.* The Court will not give Defendant Leave to pay Money into Court, and plead as to some of the Counts, and demur to the Rest. *James against Hofey, Mich. 2 Geo. 2.* in Sir George Cooke's printed *Cases of Practice.* Prime for Plaintiff; Draper for Defendant.

Green, Executor, against Beaton, in Covenant. Mich. 22 Geo. 2.

BREACH assigned for Non-payment of Rent. Defendant had obtained the Common Rule to pay 79*l.* 1*s.* into Court, and afterwards moved to add 1*l.* 4*s.* But it appearing that Defendant had pleaded, and that no Money was yet brought into Court, the Rule was discharged. Draper for Defendant; Agar for Plaintiff.

Wright against Benington. Hilary 22 Geo. 2.

IN Debt for Penalty of a Bond, conditioned for Performance of Covenants in an Indenture of Lease; Breach assigned for Non-payment of 10*l.* for Half a Year's Rent. Motion to bring 10*l.* into Court on the Common Rule, denied. This has never been done in Debt, though in Covenant it may. By the 8 & 9 *W. 3.* the Judgment in Covenant is to stand, and *Sci. fa.* may be sued out for subsequent Breaches; but that Statute does not extend to this Case. In Debt on Bond for Payment of Money by Installments, Money cannot be brought in on the Common Rule. *Easter 19 Geo. 2. Yeoman against Ross and others, in Debt for the Penalty*

Penalty of a Charter-Party, a Motion to bring Money into Court denied. On suffering Plaintiff to enter Judgment, and Payment of 10 *l.* and Costs, Proceedings stayed. *Agar* for Defendant; *Peole* for Plaintiff.

Austin against Ross, Executor. Hil. 23 Geo. 2.

RULE absolute, giving Defendant Leave to bring Money into Court on the Terms of the Common Rule, and plead *Plene Administravit*, as well as the General Issue to the Whole. *Draper* for Defendant; *Wynne* for Plaintiff.

Bate, Assignee, *against Crane*, in Covenant. Easter 24 Geo. 2.

TWO Breaches were assigned, one for Non-payment of Rent, the other for not using the Land in a Course of Good Husbandry. Defendant last Term paid Money into Court on the Common Rule, as to the first Breach, which Plaintiff then refusing to accept, delivered an Issue with Notice of Trial for last Assizes, and afterwards countermanded such Notice. Defendant this Term served the Common Rule to enter the Issue on Record; whereupon Plaintiff applied to the Court, and had Leave to take the Money out of Court, with Costs to the Time of bringing it in, he first paying subsequent Costs to Defendant out of the Money in Court, if sufficient, and if not, Plaintiff to make good the Deficiency, and thereupon Proceedings to stay. *Prime* for Plaintiff; *Bootle* for Defendant.

Emes, Widow, Executrix, *against Jew*. Hilary 25 Geo. 2.

THIS was an Action on the Case, on several Undertakings and Promises, the last Count for Money received for Plaintiff's Use as Executrix. Defendant moved, and obtained a Rule to shew Cause why he should not have Leave to pay Money into Court on the Common Rule, as to the last Count, and why, if Plaintiff shall not recover more Money than the Sum paid into Court on that Count, and shall not recover any Thing on the other

8

Counts,

Counts, why she should not pay Defendant's Costs; it appearing that Plaintiff might, as to the fourth Count, have brought the Action in her own Right. On shewing Cause, a Rule was entered into by Consent, That Plaintiff do accept the Money offered, as to the last Count, with Costs hitherto as to it; and that the last Count be struck out of the Declaration. *Willes* for Defendant; *Poole* for Plaintiff.

Rogers Assignee against Stanford Assignee, in Covenant broken. East. 27 Geo. 2.

RULE to bring Money into Court upon the Breach assigned for Non-payment of Rent made last *Trinity* Term; Plaintiff afterwards died (*viz.* in *July* last) before any Thing further done. *Poole* moved on the Part of *Elizabeth* the Wife of *Armstead Parker* Esquire, Plaintiff's Executrix, for Leave to take the Money out of Court, with Costs to the Time it was paid in, which Plaintiff in his Life Time was intitled to. *Draper* for Defendant opposed the Motion; he objected not to the Money's being paid out of Court to Plaintiff's Executrix, but to Payment of Costs; insisting that the Action was abated by Plaintiff's Death (as it certainly was); but when it came to be considered, That if the Executrix took nothing by this Motion, she and her Husband would bring a new Action for the same Thing; and then Defendant must apply to have the Money now in Court transferred to a Payment the new Action, and must submit to pay Costs therein; Defendant's Counsel waived his Objection, and a Rule was made by Consent, That the Money be paid out of Court to Plaintiff's Executrix with such Costs as Plaintiff would have been intitled to, if he had accepted the Money at first; and that no Action should be brought by the Executrix for the same Cause for which the former Action was brought by the Testator.

Moss Administrator against Hardy. Trin. 27 & 28 Geo. 2.

ACTION on Bond to a Trustee, to secure an Annuity by Instalments to Defendant's Wife. Rule absolute to stay Proceedings on Payment of 3*l.* (the only Instalment due) and Costs. *Prime* for Defendant; *Willes* for Plaintiff.

Davy

Davey Baronet *against* Martyn Assignee, &c. in Covenant broken. Hil. 28 Geo. 2.

Defendant obtained a Rule for Plaintiff to shew Cause, why he should not have Leave to bring into Court, on the common Rule, 40*s.* in lieu of each Heriot demanded by Plaintiff; but on shewing Cause the Covenant appeared to be, to render to Plaintiff the best live Beast for a Heriot, or pay him 4*s.* in lieu thereof, at Plaintiff's Election. Rule discharged. *Prime* for Defendant; *Draper* for Plaintiff.

Wright Executor *against* Swayne, Esquire, in Debt on Bond.

UPON the common Motion by Defendant to bring Principal, Interest and Costs into Court, pursuant to the Statute; It was objected by Plaintiff's Counsel, that Plaintiff being an Executor, this Case is not within the Statute. *Bryan* Executor *against* *Holloway*, Hil. 6 Geo. 2. was quoted to shew that such a Notion was once entertained. But *per Cur'*: The Words of the Statute are general, and extend to all Actions on Bond, brought by Executors as well as other Persons. Rule absolute to bring Principal, Interest and Costs into Court, and thereupon Proceedings to be stayed. *Willes* for Defendant; *Prime* for Plaintiff.

Phillips *against* Barker. Hil. 29 Geo. 2.

RULE absolute for Leave to withdraw Plea of General Issue, on Payment of Costs, pay 2*l.* 2*s.* into Court on common Rule, and plead the same Plea again; Defendant taking Notice of Trial for the Sitting after Term in *Middlesex*. No Delay has been occasioned to Plaintiff by Defendant's omitting to bring Money into Court before Plea pleaded. *Poole* for Defendant; *Willes* for Plaintiff.

moved to set aside the Verdict for want of a Term's Notice, and obtained a Rule *Nisi*, which was afterwards made absolute by the Court on hearing Counsel on both Sides, because the Notice not being given before the Efloin-Day of last Term was insufficient.

Alsop *against* Bagott.

A Question arose upon the late Act of Parliament touching Notice to be given upon the Copy of Process, Whether the Day to be expressed in the Notice must be the Efloign-Day or the Appearance-Day. In this Case Notice was given for the Appearance-Day, which the Court held to be good. This Motion was after Judgment; but the Merits not having been tried, a Rule was made to shew Cause why the Judgment should not be set aside upon Payment of Costs, but no Cause was ever shewn. (*Aliter postea.*)

Boyes *against* Twist, and others, Trin. 6 & 7 Geo. 2.

NOTICE of Trial for the last Sitting within *Easter Term* was continued till the Sitting after that Term, and afterwards continued till the first Sitting within this Term. Defendant urged, that the Notice could not be regularly continued a second Time, and having made no Defence, moved for a new Trial, and obtained a Rule *Nisi*. Upon shewing Cause, Court was of Opinion that Plaintiff cannot continue his Notice a second Time, that is, he shall give short Notice but once; but this Notice is objected to only because it is a Continuance, the full Time is given by it; and had the Word *continue* been out, Defendant agrees the Notice would be good; that Word shall not vitiate the Notice, the full Time being given, especially as it is sworn by *Jones* (Plaintiff's Attorney) that *Townsend* (Defendant's Attorney) requested him after last Term to continue the Notice till this Term. Rule discharged, but by Consent Verdict was set aside upon Payment of Costs, giving Judgment in Debt, and taking Notice of Trial within Term. *Chapple* and *Comyns* for Plaintiff; *Eyre* for Defendant.

Alsop against Nichols.

A Question did arise, Whether the Day to be inserted in the *English* Notice to appear upon Process pursuant to the late Act of Parliament, should be the Effoin-day of the Return, or the *quarto die post*. Court held that it must be the Effoin-Day, which in this Court is the Return-Day, and not the *quarto die post*, which is only a Day of Grace. *Hawkins* cited several Cases to this Purpose. *Dyer* 269. pl. 21. *Co. Litt.* 135. *Finch* 427. *Carth.* 172. 3 *Sydesfin* 229. *Salk.* 626. pl. 8. *Harvey and Broad*, pl. 9. *Davis and Salter*.

Langstaffe against Lamb. Mich. 7 Geo. 2.

NOTICE of the Execution of a Writ of Inquiry of Damages was given for a particular Day, but no Hour was mentioned. Defendant moved to set it aside, and obtained a Rule *Nisi*. Plaintiff, on shewing Cause, swore that Defendant after the Notice given had declared he would make no Defence. Court was of Opinion, that this was not sufficient to make the Notice good, and therefore set aside the Inquiry, but without Costs.

Kingdon against Horn and Frost.

THIS Action was brought against Defendants upon a joint promissory Note. Appearance was entered by Plaintiff upon the Act of Parliament, and Notice of the Declaration given to one of the Defendants only. *Per Cur'*: Held to be bad, and Proceedings staid. *Glyde* for Defendants; *Wright* for Plaintiff.

Jenner against Oatridge. Hil. 7 Geo. 2.

BAYNES moved to stay the Proceedings, the Writ being returnable in eight Days from St. Hilary, and the Notice being to appear on Sunday January 20. *Per Cur'*: The Sunday is the true Day of the Return, and therefore it is as it ought to be.

Anonymous.

A Motion was made in the Treasury to amend a Notice to set off a Debt according to the late Act of Parliament, but the Judges declared it could not be done. Notices of this Kind are in this like Notices of Trial, &c. which never were amended by the Court.

Green *against* Watkins.

UPON hearing Counsel on both Sides, and after taking Time to consider, the Court were of Opinion that a Notice to appear on *Monday January 21.* as the Return-Day of *Oct. Hil.* was bad; it ought to have been to appear on the 20th, which, although *it be Sunday, is the true Day of the Return.* Girdler for Plaintiff; Glyde for Defendant.

Jenner *against* Williamson.

SAME Determination. Eyre for Defendant; Corbett for Plaintiff.

Paul *against* Gledhill.

JUDGMENT was signed in *Easter* Term the 4th of his present Majesty, and a Writ of Enquiry of Damage executed last *Michaemas* Vacation on eight Days Notice. Birch for Defendant moved to set it aside for want of a Term's Notice; Plaintiff having lain still above 12 Months; and upon hearing Chapple and Eyre for the Plaintiff, the Court set aside the Writ of Inquiry for want of due Notice. In all Cases where Proceedings have staid above 12 Months, whether as to Pleadings or Notices, a whole Term's Notice must be given.

Hannaford *against* Holman. Easter 7 Geo. 2.

NOTICE of the Declaration being left in the Office was without Date, and Notice of the Execution of the Writ of Inquiry was at Ten in the Forenoon, or as soon after as the Sheriff could attend. The Court, upon hearing Counsel on both Sides, held both Notices bad, and therefore set aside the Judgment and Inquiry. *Chapple* for Plaintiff; *Eyre* for Defendant.

Lloyd *against* Beeston.

THE Writ was returnable *quinden' Pasche* served with Notice to appear on *April 28*, which was *Sunday*. *Chapple* moved to stay Proceedings; but *per Cur'*, the Day in the Notice is the true Day of Return. No Rule.

Foster *against* Smales.

THE Notice of the Time of executing the Inquiry was between Ten and Two, which the Court thought too uncertain, and made a Rule to shew Cause why the Inquiry should not be set aside. *Urlin*.

Williams *against* Jones.

THIS was an Action of Assault and Battery, to which Defendant had pleaded *son Assault Demeſne*; whereto Plaintiff replied *De Injuria ſua propria*, and Issue was joined in *Michaelmas* Term laſt. Plaintiff gave Notice of Trial for the Sitting after *Michaelmas* Term, and countermanded, and again for the ſecond Sitting within *Hilary* Term, and countermanded; whereupon Defendant gave a Rule to enter the Issue, and tried the Cause by Proviſo the Sitting after *Hilary* Term, and the Plaintiff not appearing at the Trial was nonſuited. Plaintiff moved to ſet aſide the Nonſuit as irregular, ſuggeſting that Defendant could not regularly try the Cause by Proviſo till *Eaſter* Term; but that

being ruled against him, he prayed the Nonsuit might be set aside upon Payment of Costs; but the Proof being upon the Defendant, and his Witnesses having been examined at the Trial, Court refused to make any Rule.

Jemmett against Voyer. Trin. 7 & 8 Geo. 2.

PROCESS was served *May* 14. and Declaration delivered *June* 8. Defendant moved to stay the Proceedings, the true Day of Return, which was *quinque Pascha May* 19. not being inserted in the Notice, but the Day after. The Question was, Whether Defendant was too late to move to stay the Proceedings. Court were of Opinion, that as he came before interlocutory Judgment signed, he came in due Time, and made a Rule to stay Proceedings. *Birch* for Defendant; *Raynes* for Plaintiff.

Dixon against Fenner.

IN an Action of Debt upon a Bond, Defendant pleads Payment. Plaintiff replies, and tenders an Issue. Defendant demurs. *Chapple* moved after the last Paper-Day to put the Cause into the Paper to be argued, and obtained a Rule. Upon the Day of Argument *Birch* objected, that the Cause was irregularly set down, and the Plaintiff had given Notice of Trial for the Sitting after Term. Court discharged the Rule for setting down the Cause on Payment of Costs; Defendant consenting that the Plaintiff might proceed to Trial according to Notice at the Sitting after Term.

Robinson against Philips.

THE Question was, Whether Notice of executing the Inquiry between Eleven and Two was good. *Curr'*: We have held it to be confined within two Hours at most, and therefore the Notice is irregular. *Shew Cause.*

Gorman *against* Boyle. Mich. 8 Geo. 2.

EIGHT Days Notice of Trial was held to be bad, and the Verdict obtained by Plaintiff without Defence was set aside, the Place of Defendant's Abode being in *Ireland*,

Price *against* Bambridge, an Attorney.

NOTICE of the Execution of the Writ of Inquiry was twice continued. Court held the second Continuance bad. A Notice can be continued but once. The first Continuance was also bad, not being served till within an Hour before the Time appointed for the Execution of the Writ of Inquiry; it should have been served two Days before. *Chapple* for Defendant; *Skinner* for Plaintiff,

Squire *against* Almond. Hil. 8 Geo. 2.

NOTICE was given to execute a Writ of Inquiry of Damages at the Sheriff's Office in *Northampton* between the Hours of Ten and Two. Upon hearing Counsel on both Sides, the Court was of Opinion that the Notice was bad both as to Place and Time, It should have been expressed at what Sign, or whose House the Sheriff's Office was kept, and the Time is too extensive, which ought to be confined to two Hours. The Writ of Inquiry and Inquisition taken thereupon were set aside. *Skinner* for Defendant; *Eyre* for Plaintiff.

Jacob *against* Marsh. East. 8 Geo. 2.

PROPER Notice of Trial was given and countermanded. A second Notice of Trial was given, but therein the Name of the Cause was omitted. The second Notice was afterwards continued, and the Name of the Cause inserted in the Continuance; and thereupon the Cause was tried. The Court was of Opinion, that the second Notice being bad, could not be helped by the Continuance, and set aside the Verdict.

Chanklin

Chanklin *against* J'Anfon.

CHAPPLE for Defendant obtained a Rule to shew Cause why Proceedings should not be staid upon an Affidavit that the Process served was returnable on one Day, and the Notice to appear was at another ; but the Copy of the Process with Notice served was not annexed to the Affidavit. *Darnal* for Plaintiff insisted, that whenever Defendant will take Advantage of such Mistake, he must produce the Copy served, and swear he was served with no other ; and of that Opinion was the Court, and discharged the Rule.

Clapham and others.

PROCESS was against one *Clapham*, and the Notice was directed to *Clifham*, which was held irregular, and the Proceedings were staid. *Belfield* for Defendant ; *Eyre* for Plaintiff.

Goodright, on the Demise of Hawkey, *against* Hoblyn. Trin. 8 & 9 Geo. 2.

THIS Action was laid in *Cornwall*. Notice of Trial was given in Town, and countermanded in the Country three Days before the Commission-Day of the Assizes. The Question was, Whether this was a good Countermand to prevent Costs for not proceeding to Trial, Defendant having sent a Witness from *London*, who was got as far as *Exeter* before he heard of the Countermand. *Per Cur'* : Notice of Trial cannot be given in the Country, but may be well countermanded there ; and though by that Practice Defendant is put to an Inconvenience in this Case, yet the Inconveniencies which must necessarily accrue from the contrary Practice would be much greater. The Countermand would have been good if given but two Days before the Commission-Day. *Eyre* for Plaintiff ; *Belfield* for Defendant.

Taylor *against* Sherman.

HELD *per Cur'*, that in a Notice of a Declaration being left in the Office it is not sufficient to say that the Plaintiff declares upon a Note of Hand; the Nature of the Action must be expressed, as Debt, Case, &c. *Belfield* for Defendant; *Eyre* for Plaintiff.

Swaile, an Attorney, *against* Leaver, in Middlesex.
Mich. 9 Geo. 2.

THE Defendant lived above 40 Miles from London. Plaintiff gave fourteen Days Notice of Trial, and countermanded the same; afterwards Defendant tried the Cause by Proviso upon eight Days Notice, and Plaintiff not appearing was nonsuited. *Wynne* and *Eyre* for Plaintiff moved to set aside the Nonsuit, the Notice of Trial by Proviso being irregular; and upon hearing *Wright* for the Defendant the *Non-pros* was set aside, Defendant being obliged to give the same Notice of Trial as required from Plaintiff. It was at first doubted whether the Plaintiff not appearing at the Trial was not absolutely out of Court, and could not complain of the Nonsuit; but it was held that the Notice being ill, must be looked upon as no Notice at all, and consequently he could not appear at the Trial, and the Inconvenience would be great if a Nonsuit obtained without any Notice could not be complained of. It was observed by *Eyre*, that though at *Nisi prius* Plaintiff be out of Court, he hath a Day in Bank here, *viz.* the Return of the Writ of *Habeas Corpora Jurator'*.

Le Mark *against* Newnham. Trin. 10 Geo. 2.

NOTICE was given of the Execution of a Writ of Inquiry of Damages at the *Three Tons* in *Brookstreet*, without saying in *Holborn*, or elsewhere, though there are three Streets of that Name in *Com' Mid'*. *Wright* moved to set aside the Inquiry for this Defect in the Notice. It was urged by *Eyre* for Plaintiff, that the *Three Tons* in *Brookstreet*, where the Sheriff of *Middlesex* constantly executes Writs of Inquiry in Vacation Time, is a well-known Place

Place to every Practiser; but *per Cur'*, the Notice is not so certain as it ought to be, the Inquiry and Inquisition thereupon taken must be set aside. *Wright* for Defendant, who cited *Squire* against *Almond*, *Hil. 8 Geo. 2.*

Edwards *against* Edwards.

NOTICE of a Declaration left in the Office in an Action upon a promissory Note (without saying in Trespass on the Case) held insufficient Notice. *Boote* for Defendant; *Chapple* for Plaintiff.

Lee *against* Bradford. Mich. 10 Geo. 2.

Defendant appeared by his Attorney, and after Judgment Plaintiff gave Notice of the Execution of a Writ of Inquiry to Defendant himself (and not to his Attorney) which was held bad Notice, and the Writ of Inquiry and Inquisition taken thereupon were ordered to be set aside. *Agar* for Defendant; *Wynne* for Plaintiff.

Lowes *against* Smith, in Northumberland. Mich,
11 Geo. 2,

NOTICE of executing Writ of Inquiry of Damages at the *Moot-Hall* in the *Castle-Garth*, without saying in what County, was held insufficient, and the Inquiry set aside. *Agar* for Defendant; *Prime* for Plaintiff.

Atwood *against* Meredith, Executor.

COPY of a Special *Capias* to Plaintiff's Damages 40*l.* was served on Defendant without Notice to appear, and Appearance was entered by Plaintiff on Affidavit of Service. Defendant moved to stay the Proceedings for want of Notice, and the Court was of Opinion that the Statute of 12 *Geo.* and 5 *Geo. 2.* ought to be considered as one and the same Law; and in all Cases where
Process

Process is served, let the Damages be above 10*l.* or under, Notice to appear must be given. *Wright* for Plaintiff; *Draper* for Defendant.

Smith against Hoff. Hil. 11 Geo. 2.

Plaintiff's Attorney gave Notice as follows: *I hereby countermand my Notice of Trial given for the second Sitting within this Term, and continue the same till the third Sitting, &c.* Defendant made no Defence, and moved to set aside the Verdict. *Per Cur'*: After a Notice is countermanded it cannot be continued; the Verdict must be set aside.

Butler against Johnson.

Defendant had obtained a Judge's Order for Time to plead, pleading issuably and taking Notice of Trial within Term, or if he should not plead, taking the like Notice of executing Writ of Inquiry. The Time for pleading expired *February* 5. when Defendant not pleading, Plaintiff signed Judgment, and *February* 7. gave Notice to execute Inquiry on the 8th. Defendant moved to set aside the Inquiry for Insufficiency of Notice, urging that Plaintiff ought to give as much Notice as he could. *Per Cur'*: Plaintiff might have given Notice on the 6th; short Notice should be at least as much as is sufficient to countermand a Notice, *viz.* two Days. Let the Inquiry be set aside without Costs. *Skinner* for Plaintiff; *Wright* for Defendant.

Hollis against Westbury. East. 11 Geo. 2.

Plaintiff gave Notice of the Execution of a Writ of Inquiry of Damages at the Sign of the *Bell*, without making Mention of any Town; which Notice was held insufficient, and the Inquiry set aside. *Agar* for Defendant; *Eyre* for Plaintiff.

Last *against* Denny. Mich. 12 Geo. 2.

MOTION to set aside Inquiry for Irregularity, Notice being given to execute it at 11 o'Clock, without naming any other Hour. *Cur'* held it regular, provided it was executed before 12; which appearing by Affidavit, Court discharged the Rule to shew Cause. *Skinner* for Defendant; *Prime* for Plaintiff.

Christophory *against* Otto. Hil. 12 Geo. 2.

WRIT returnable *On. Hil.* Declaration left in the Office *de bene esse* the first Day of the Term. Defendant's Attorney put in Bail in Time; whereupon Plaintiff's Attorney demanded a Plea, and for want thereof signed Judgment. Defendant moved to set aside the Judgment, insisting that his Attorney ought to have had Notice of the Declaration, and obtained a Rule to shew Cause, which was discharged. The Declaration is well delivered *de bene esse*, and Notice is not necessary. *Eyre* for Plaintiff; *Draper* for Defendant.

N. B. This has since been otherwise determined, and Notice held necessary.

Panchand *against* Woolley.

RULE to shew Cause why the Judgment should not be set aside, discharged. The Objection was, that the Writ was not shewn at the Time of Service of the Copy. *Per Cur'*: It is not necessary. *Vide* Acts to prevent vexatious Arrests, 12 Geo. & 5 Geo. 2. *Agar* for Plaintiff; *Draper* for Defendant.

Braty *against* Baldock. Easter 12 Geo. 2.

Plaintiff declared *de bene esse*, and gave Notice to plead in four Days, though Defendant by the Rules of the Court was intitled to eight Days Time to plead. Plaintiff staid till after the eight Days expired before he signed Judgment; but the Notice be-

ing bad, the Rule to shew Cause why the Judgment should not be set aside was made absolute. *Skinner* for Defendant; *Wright* for Plaintiff.

Gregory *against* Reeves. Trin. 13 Geo. 2.

IT being doubtful whether *Sunday* should be reckoned as one Day in Notice to justify Bail, it was determined *per Cur'*, that for the future *Sunday* shall not be counted one (it not being a proper Day to inquire after Bail upon) but two Days Notice must be given, of which *Sunday* shall not be one. Upon Motion by *Comyns* for Defendant to justify Bail, Notice served *Saturday June 23*, to justify Bail *Monday* the 25th; the Notice being insufficient, the Bail were not suffered to justify.

Mackintosh *against* Melo. Mich. 13 Geo. 2.

WRIT returnable the first Return of the Term. Declaration left in the Office *de bene esse* the first Day of the Term (*October 23*.) and Rule to plead given that Day. Notice the same Day served upon Defendant to plead within the first four Days of *Michaelmas* Term. Plaintiff staid till the Time for appearing was out, and then entered an Appearance by Affidavit, and signed Judgment. Defendant moved to set aside Judgment, objecting to the Notice of Declaration, that it ought to have been to plead within four Days after Declaration delivered according to the Rules of *Michaelmas* and *Easter*, 3^d Geo. 2. and not within the first four Days of the Term. Rule to shew Cause discharged. *Per Cur'*: Though the Words of the General Rules of Court aforesaid do seem to exclude the Day of the Delivery of the Declaration, yet the Construction must be agreeable to the Rule to plead, which is always inclusive; and the Plaintiff having staid 'till the Time for appearing was out, he might regularly enter Appearance by Affidavit, and sign Judgment. Vide *Charlton* and *Hanky*, Hil. 7 Geo. 2. *Agar* for Defendant; *Eyre* for Plaintiff.

Pritchard *against* Lewis. Hil. 13 Geo. 2.

WRIT returnable in *Easter* Term last. Plaintiff entered Appearance according to the Statute, and left Declaration in the Office, but rested all *Trinity* and *Michaelmas* Term; and before the *Essoin*-Day of this Term gave Defendant Notice of Declaration. The Declaration was deemed well delivered only from the Time of Notice, and consequently came too late. Defendant was then out of Court. Rule absolute to stay Proceedings. *Hayward* for Plaintiff; *Bootle* for Defendant.

Coates *against* Hammond.

ISSUE was joined in *Hilary* Term, 12 Geo. 2. and Notice of Trial given 8th *February* 1738, for the then next *Yorkshire* Assizes, which Notice was countermanded; and 26th *January* 1739, in *Hilary* Term 13 Geo. 2, Plaintiff gave new Notice, and proceeded to Trial at last Assizes. Defendant moved to set aside the Verdict, insisting that the last Notice of Trial ought to have been given before the *Essoin*-Day of *Hilary* Term. Upon shewing Cause, the Practice appeared to be doubtful, and the Court ordered the Verdict to be set aside, and Costs to attend the Event of the Suit. *Bootle* for Defendant; *Burnett* for Plaintiff.

Note; A new General Rule was made upon this Occasion to regulate the Practice for the future.

Tilney *against* Watson. Mich. 14 Geo. 2.

AN Inquisition taken upon a Writ of *Scire fieri inquir'* was set aside, for Want of due Notice of the Execution of the Writ. Plaintiff insisted, that Notice was not necessary. If the Sheriff returns a *Devasavit*, Defendant may traverse the Return. But *per Cur'*: The same Notice is requisite as of executing a Writ of Inquiry of Damages. *Draper* for Defendant; *Bootle* for Plaintiff.

Stafford *against* Thompson.

THE Commission-Day of the Assizes was *Monday*, and Notice of Trial was countermanded on *Saturday* next before, and *Sunday* being the only intervening Day, the Question was, Whether the Notice was regularly countermanded, or not? The Court held the Countermand to be regular, and discharged the Rule to shew Cause why Plaintiff should not pay Defendant Costs for not proceeding to Trial. *Skinner* for Plaintiff; *Bootle* for Defendant.

Bowler *against* Jenkin. Hilary 15 Geo. 2.

Defendant lived above forty Miles from *London*, and Plaintiff proceeded to Trial at a Sitting there, upon ten Days Notice; no Defence was made, and Defendant insisting, that he was intitled to fourteen Days Notice of Trial, moved to set aside the Verdict, and had a Rule to shew Cause, which was made absolute. By the Act 14 Geo. 2. no Cause is to be tried in *London* or *Middlesex*, where Defendant resides above forty Miles from *London* or *Westminster*, unless Notice in Writing be given at least ten Days before such intended Trial. Before this Act, fourteen Days Notice was the settled Practice; and unless necessitated, the Court will not be bound by an Act made to take away a Benefit from Defendants. The Practice or Law of the Court cannot be taken away but by Negative Words, *i. e.* There shall be no more than ten Days Notice. Fourteen Days Notice, notwithstanding this Act, still necessary. *Hayward* for Defendant; *Agar* for Plaintiff.

Smith *against* Lacock. Trinity 16 Geo. 2.

COURT held, Notice of the Execution of the Writ of Inquiry of Damages, given in the Country to the Attorney there, (and not to the Agent who received the Declaration in Town) good and sufficient Notice, and discharged the Rule to shew Cause why the Inquisition should not be set aside. *Bootle* for Defendant; *Agar* for Plaintiff.

Tashburn *against* Havelock. Mich. 16 Geo. 2.

NOTICE of Trial on an old Issue was given to the Attorney in the Country, and not to the Agent in Town ; the Question was, Whether it was good Notice, or not? *Per Cur'* : The Notice on this old Issue is well given to the Attorney in the Country, for it may be given either to Attorney or Agent ; but where Notice of Trial is given on the Issue-Book, it must be given to the Agent, because the Issue can be delivered no where but in Town. Notices of Trial and Countermands, Notices of executing Writs of Inquiry and Countermands, may be given either to the Attorney in the Country, or to the Agent in Town. But of those Things which are to be done only in Town, Notice must be to the Agent ; and all Notices, where the Party hath a known Attorney, must be given to that Attorney, or his Agent, and not to the Party himself. There has been no Determination of this Court that Notice of Trial in the Country is bad, though it hath been so understood. *Mountstevens against Templar, Mich. 7 Geo. 2.* Attornies in the Country are to take no Notices but of Trial, Inquiries, and their Countermands. *Easter 6 Geo. 2.* That Countermand of Notice of Trial may be given either in Town or Country.

Darker *against* Edwards. Mich. 16 Geo. 2.

THE *Capias ad respond'* bore Teste 7th July, returnable 27th October, and was dated 25th October 1742. A Copy was served, with Notice to appear on the 27th October next ; which must refer to the Time when served, and consequently must intend October 1743. The Notice should have been to appear on the 27th of this instant October, or October 1742, and not October next. The Act of Parliament designed to make certain the Time for Defendant's Appearance, by the Notice. The Rule to stay Proceedings was made absolute. *Kestelbey* for Defendant ; *Agar* for Plaintiff.

Hester against Hall.

AFTER Notice of Trial given, and regularly countermanded, Plaintiff obtained a Rule to discontinue, upon Payment of Costs. After the Notice of Trial, and before the Countermand, a Witness for Defendant, who resided in *London*, set out for *York* Assizes; and the Question was, Whether the Expence of this Witness could be allowed Defendant in Costs? The Court held, that as the Countermand was regular, Costs for this Witness could not be allowed. *Draper* for Defendant; *Willes* for Plaintiff.

Bailey against Semple. Trinity 16 & 17 Geo. 2.

Defendant being beyond the Seas, and his Attorney dead, Rule absolute, that Demand of a Plea in the Office shall be sufficient Notice; upon Affidavit of Service of a Rule to shew Cause on one of Defendant's Bail, and that the other was not to be found. *Draper* for Plaintiff.

Blackmore against Smith. Mich. 17 Geo. 2.

AFTER Plea pleaded, Proceedings had stayed three Years, and then Plaintiff delivered an Issue, and afterwards gave fourteen Days Notice of Trial. The Court made the Rule absolute to set aside the Verdict, for Want of a Term's Notice of his Intent to proceed, by the Party proceeding pursuant to General Rule, *Easter 13 Geo. 2.* *Birch* for Plaintiff; *Agar* for Defendant.

Miller against Parsons. Hilary 17 Geo. 2.

THE Name [*White*] was put on the Bail-piece, as Attorney for Defendant; Plaintiff's Attorney not being able, upon diligent Inquiry, to find this *White*, left a Declaration in the Office, and gave Notice thereof to Defendant, and for Want of a Plea signed Judgment, and gave Notice of executing a Writ of Inquiry

to Defendant. On the Part of Defendant it was insisted, that the Proceedings were irregular; that Plaintiff's Attorney ought to have found out Defendant's Attorney; or if he could not, that Notice of the Declaration, &c. could not be served on Defendant without Leave of the Court. And a Rule was made to shew Cause why the Proceedings should not be set aside, with Costs. Upon shewing Cause, the three Prothonotaries reported, and the Court held, the Proceedings to be regular, and the Rule was discharged. Where the Party's Attorney cannot be found, Notice may be served on the Party himself. Where neither Attorney nor Party can be found, the Court must be applied to, and will order Notice, &c. in the Office to be good, unless the Bail (if any) shew Cause to the contrary. *Vide Bailey against Semple, Trin. 16 & 17 Geo. 2. Gapper for Plaintiff; Agar for Defendant.*

Johnson against Johnson and Ouchterlony. Trinity
17 & 18 Geo. 2.

CAPIAS returnable *Gro. Trin.* Dated 18th *May* 1744, and served with Notice to appear 21st *May* next [*May* 1745] instead of this instant *May*. Rule absolute to stay Proceedings. *Skinner* for Plaintiff; *Draper* for Defendant.

Roe, on the Demise of Hutchings, against Dunning
and others. *Mich. 18 Geo. 2.*

RULE to shew Cause why Judgment as in Case of a Nonsuit. Objected by Counsel, for the Lessor of Plaintiff, that a Term's Notice of Motion ought to have been given; but the Court held otherwise. The General Rule of Court extends only to the Party's Intent to proceed, not to Motions to end Proceedings. Rule absolute. *Hussey* for Defendant; *Gapper* for Lessor of Plaintiff.

Reed against Blanchett. Hilary 19 Geo. 2.

Defendant moved to amend his Notice, to set off a mutual Debt, delivered with his Plea of *Non assumpsit*, (by striking out

out Plaintiff, and inserting Defendant) which the Court denied. Then Defendant prayed Leave to withdraw his Plea, and plead *Non assumpsit de novo*, with new Notice to set off, which was granted. *Skinner* and *Bootle* for Plaintiff; *Prime* for Defendant.

Walker *against* Towne and Lee. Trinity 19 & 20
Geo. 2.

NOTICE of Declaration being left in the Office served on a *Sunday*, Rule to shew Cause why Defendant should not have an Imparlance, made absolute. The Court held the Notice on *Sunday* bad, within the Statute *Car. 2.* which ought to have a large Construction in Favour of Religion. Declaration in Ejectment, which is considered as Process, cannot be delivered on *Sunday*. Process and Proceeding have been construed, by Chief Justice *Holt*, to be the same Thing. Anciently all Pleadings were *Ore tenus* at the Bar. Notice of Declaration is the same as Delivery. It is no Declaration till Notice. *Wynne* for Defendant; *Bootle* for Plaintiff.

Braithwaite *against* Allan. Hilary 20 Geo. 2.

Defendant objected to the Insufficiency of Plaintiff's Notice of executing a Writ of Inquiry of Damages, with respect to Uncertainty of Place. The Words of the Notice were at the usual Place at *Durham*, and obtained a Rule to shew Cause why the Inquisition should not be set aside. Upon shewing Cause it appeared, that for twenty-four Years past, and upwards, the Place, *viz.* The Court-House where Causes were tried, and where this Writ was executed, had been the known and established Place for executing Writs of Inquiry; two Counsel for Defendant attended the Execution of this Writ, and cross-examined Plaintiff's Witnesses. The Rule was discharged. *Prime* for Defendant; *Willes* for Plaintiff.

Kettle *against* Bulstrode, Clerk of the Juries. Mich.
22 Geo. 2.

A Copy of the Bill filed, with Notice to appear, was left with Mr. *Pritchard*, Defendant's Deputy, after Nine o'Clock in the Evening. Rule absolute to stay the Proceedings. *Poole* for Defendant; *Prime* for Plaintiff.

against Ferguson.

THE Writ was returnable *Tres Mich.* the Notice to appear subscribed to the Copy served was to appear at the Return, being the 20th *October*, without inserting the Word (next), or (the Year 1748), held defective. Rule absolute to stay Proceedings. *Skinner* for Defendant.

Thomlinson, Gent. one, &c. *against* Gorton. East.
23 Geo. 2.

RULE to shew Cause why Proceedings should not be set aside, with Costs. Objected, that Declaration left in the Office was not indorsed to be left *de bene esse*. The Question was, Whether Notice of Declaration left *de bene esse*, without indorsing the Declaration, was or was not sufficient? The Secondaries did not agree in their Report of the Practice. One of them thought the Notice sufficient without the Indorsement. The two others *contra*. Rule absolute to set aside the Delivery of the Declaration, and subsequent Proceedings, *sans* Costs. *Draper* for Defendant; *Willes* for Plaintiff.

Nash *against* Harrow. Trinity 24 Geo. 2.

PLAINTIFF's Attorney gave two Notices of executing Inquiry of Damages, one to Defendant himself, a Prisoner in the *Fleet*, the other to the Turnkey; but, by Mistake, in both Notices the Name *Birt*, instead of *Nash*, was inserted as Plaintiff; notwithstanding which, the Inquiry was executed, and final Judgment

ment signed. Rule absolute to set aside Inquisition and final Judgment, with Costs. *Prime* for Defendant; *Wynne* for Plaintiff.

Molley against Sanford. Easter 29 Geo. 2.

INQUISITION taken on Writ of Enquiry of Damages, set aside with Costs, for want of Notice of the Execution of said Writ served on Defendant's Attorney, or his Agent: Bail above had been put in, and Declaration received by Defendant's Attorney; notwithstanding which, the Notice aforesaid was not served upon him or his Agent, but upon Defendant himself: which was clearly irregular. *Pool* for Defendant; *Hewitt* for Plaintiff.

Nonpros, Nonsuit, &c.

Ellwood against Ellwood. Trin. 6 & 7 Geo. 2.

A Motion was made to set aside a *Non-pros* signed for want of a Declaration, which had been demanded of Plaintiff's Attorney in the Country, and not of the Agent in Town. It was, upon shewing Cause, sworn that Plaintiff's Attorney in the Country agreed the Demand of him should be regular. *Per Cur'*: Let the *Nonpros* be set aside; no Agreement of Country Attornies can vary the Practice of the Court; all Transactions of this Kind must be in Town.

Love against Day. Mich. 7 Geo. 2.

INDEBITATUS *Assumpsit* brought against a Stake-holder for Money had and received for Plaintiff's Use. The Judge of Assizes, who tried the Cause, was of Opinion that the Action would not lie, therefore nonsuited the Plaintiff upon the opening his Case, without hearing any Evidence. Plaintiff upon Affidavits of this Matter, moved the Court to set aside the Nonsuit; but the Court

refused to make any Rule. It was alledged from the Bar, that the Court of *King's Bench* had made a Rule in the like Case, but no such was produced.

Costa against Missaubin, Administrator, during the Minority of an Infant Executor. Mich. 8 Geo. 2.

THIS was an Action of Debt brought upon a *Non-pros*, in an Action wherein Defendaht's Testator was Plaintiff, and he died after the Nonsuit, and before the Day in Bank. *Eyre* moved to set aside the *Nonpros* and stay Proceedings, and obtained a Rule to shew Cause; and upon shewing Cause, Court were of Opinion that this is a Matter of Error, and ought not to be considered as an Irregularity; (the Nonsuit is not helped by the Statute, which extends only to Verdicts) and therefore discharged the Rule. 1 *Salk.* 8. *Bawler against Delander in B. R. 1 Geo. Chapple and Eyre* for Defendant; *Skinner* for Plaintiff,

Billing against Billing. Trin. 10 & 11 Geo. 2.

A *Non-pros* for want of a Declaration was signed in Prothonotary *Borrett's* Office, which was set aside as irregular; Mr. *Laremore*, Plaintiff's Attorney, being a Practiser in *Cooke's* Office. The Rule to declare must always be given in that Prothonotary's Office where Plaintiff's Attorney is entered; though a Declaration be duly demanded, that is not sufficient to support the *Non-pros*, unless the Rule be given in the proper Office. *Bootle* for Plaintiff; *Chapple* for Defendant.

Wilson against Barber. Mich. 14 Geo. 2.

A Demurrer, and several Issues were joined; before the Demurrer argued, Plaintiff proceeded to try the Issues; as to one of which the Proof lay upon Defendant, and as to the rest upon Plaintiff. Plaintiff began at the Assizes to give Evidence upon the first Issue, and failing in Proof, was nonsuited. Plaintiff moved to set aside the Nonsuit, which was thought reasonable, though against the

the Course of the Court. The Nonsuit was set aside by Consent, on Payment, of full Costs. *Draper* and *Willes* for Plaintiff; *Bootle* for Defendant.

Diggs against Price. Mich. 15 Geo. 2.

DRAPER for Defendant moved, that the Issue-Roll might be brought into Court, and for Judgment as in Case of Nonsuit, pursuant to the Act of Parliament 14 Geo. 2. *Per Cur'*: In the first place a Rule must be given for Plaintiff to enter the Issue upon Record, which if he fails to do, Defendant may have a *Nonpros* for Want thereof. If Plaintiff enters the Issue, the Roll must be produced in Court, and thereupon Defendant may move for a Nonsuit upon the Act of Parliament. Whenever the Court admits the Cause shewn by Plaintiff sufficient to discharge the Rule to shew Cause why a Nonsuit, the Court will appoint a future Day for the Trial, in Country Causes at the next Assizes, in *London* or *Middlesex* at a Sitting at a convenient Distance.

Clarke against Gorrill.

PLAINTIFF's own Illness was held sufficient to prevent a Nonsuit upon the late Act of Parliament, and was allowed as sufficient Cause, and next Assizes appointed for the Trial. After Debate, and the Court's Opinion, *Bootle* objected to Plaintiff's Affidavit, that it was sworn before his own Attorney. But, *per Cur'*: That Objection comes now too late. *Bootle* for Defendant; *Prime* for Plaintiff.

Dapp against Woodman. Easter 15 Geo. 2.

RULE to shew Cause why Judgment as in Case of Nonsuit, pursuant to the late Statute, discharged. Plaintiff ordered to pay Costs of the Application, and peremptorily to try the Cause at the next Sitting. The Court inclined to think they could, if they thought it reasonable, enlarge the Time afterwards, in Case of a Default. *Agar* for Plaintiff; *Wynne* for Defendant.

Vile, Widow, *against* Daw and others. Trinity 16
Geo. 2.

ISSUE was joined in *Trinity* Term last, but Plaintiff did not proceed to Trial at the then next Assizes; and before the last, which was the second Assizes, Plaintiff married, to wit, 10th *December* 1741. After Notice of Trial given, Defendant moved for Judgment as in Case of Nonsuit; and upon shewing Cause, the Court were of Opinion, that though no Excuse was shewn for Plaintiff's not proceeding to Trial at the first Assizes, yet Defendants, for that Default, should have applied in *Michaelmas* Term last; but are now too late. As to the second Assizes, the Excuse is sufficient; by the Marriage the Suit is abated *de facto*. The Rule was discharged. *Draper* for Plaintiff; *Bootle* for Defendants.

Sutton *against* Waddilove, in Replevin. Mich. 16
Geo. 2.

DEFENDANT, by Leave of the Court, made two Avowries, viz. first for *Damage feasant*; second for Rent in Arrear, Plaintiff obtained a Judge's Order for a Week's Time to plead in Bar to the Avowries, pleading issuably, and taking Notice of Trial for the Sitting after last Term in *Middlesex*; and within Time demurred to the first, and pleaded in Bar to the last Avowry. Defendant signed a *Nonpros*, for want of Plaintiff's pleading issuably to both Avowries, which the Court held to be regular; but upon Payment of Costs, pleading issuably to both Avowries, and taking Notice of Trial within this Term, the *Nonpros* was set aside. *Willes* and *Agar* for Defendant; *Belfield* for Plaintiff.

Guy *against* Wilkinfon. Trinity 16 & 17 Geo. 2.

RULE to shew Cause why Judgment as in Case of Nonsuit, discharged. Defendant having first applied for Costs for Plaintiff's not proceeding to Trial, has made his Election. The
Plaintiff

Plaintiff was ordered peremptorily to proceed to Trial at next Assizes. *Draper* for Plaintiff; *Bootle* for Defendant.

Milton and another, Assignees of a Bankrupt, *against* Terrill. Mich. 17 Geo. 2.

PLAINTIFFS not having proceeded to Trial after Issue joined, according to the Course of the Court, Defendant had applied for Judgment as in Case of Nonsuit, pursuant to the Statute; and Plaintiff having made a reasonable Excuse, further Time was allowed by the Court for Trial peremptorily at last Assizes. Plaintiffs gave no new Notice of Trial, but made Default again, and endeavoured to excuse the second Default by Affidavit, purporting, that Plaintiffs, the Assignees, found a Debt entered in the Bankrupt's Books as due from Defendant, but for Want of the Bankrupt's attending Plaintiffs in Time, as requested, according to his Duty, and supplying them with Proof of the Debt, and informing them how to answer a Set-off insisted on by Defendant, Plaintiffs could not proceed to Trial. *Per Cur'*: The Word [peremptory] in the Rule, doth not preclude the Court from a farther Enlargement of the Time, if they think it reasonable. It is wrong to insert the Word [peremptory]; the second Excuse may be better than the first. The Statute is founded on Neglect. Suppose Plaintiff's Attorney should die *Manu Dei*, or Defendant should, by some Act of his, hinder the Trial; the Effects of the Bankrupt must not be wasted to the Prejudice of his Creditors. No Notice of Trial was given for last Assizes. Defendant's Attendance was then unnecessary. The Bankrupt, after obtaining his Certificate, may be a Witness. The Time for Trial was further enlarged till next Assizes, upon Payment of Costs of the Application. *Belfield* for Defendant; *Draper* for Plaintiff.

Sugar, *qui tam*, *against* Webster. Trinity 17 & 18 Geo. 2.

JUDGMENT as in Case of a Nonsuit applied for; and the Question was, Whether an Action *qui tam* was within the Statute, or not? *Per Cur'*: A common Informer may be nonsuited. Plaintiff was ordered to pay Costs of the Application, and

and peremptorily to proceed to Trial at next Assizes. *Willes* for Plaintiff; *Skinner* for Defendant.

Ogle, Esquire, Executor, *against* Moffit.

DEFENDANT had applied for and received Costs, for Plaintiff's not proceeding to Trial at last Assizes, and now moved for Judgment as in Case of Nonsuit, pursuant to the Statute; but having made his Election, and taken Costs for not proceeding to Trial, he cannot have the other Remedy. The Motion was denied, *Bootle* for Defendant; *Prime* for Plaintiff.

Lowe *against* Peacock and others. Hilary 18 Geo. 2.

DEFENDANTS obtained a Rule to shew Cause why Judgment of Nonsuit *secundum Stat'*. Plaintiff afterwards had a Rule to shew Cause why he should not have Leave to discontinue, which was enlarged, and both came on together. The Court held the Application for Leave to discontinue, after the first Motion, wrong, and made the Rule absolute for a Nonsuit. *Bootle* for Defendant; *Willes* for Plaintiff.

Jones, on the Demise of Wyat, *against* Stephenson, in Ejectment.

TWO of Plaintiff's material Witnesses were disabled by Gout, &c. from attending the Trial last Assizes. Excuse good to prevent Nonsuit. Time given Plaintiff to try at next Assizes peremptorily, on Payment of Costs for not proceeding to Trial at last Assizes only. Where the Excuse is sufficient, the Court do not give Costs of the Application; *aliter* where it is insufficient. *Prime* for Plaintiff; *Birch* for Defendant.

Pepiatt, one, &c. *against* Bell. Easter 19 Geo. 2.

JUDGMENT as in Case of Nonsuit moved for, on Affidavit of Notice of Motion only, and Rule to shew Cause. Objection by Plaintiff's Counsel, that to support the Rule, there ought to have been also an Affidavit that the Cause was not tried; which Objection was allowed, and the Rule discharged.

Hartley,

Hartley, alias Green, against Atkinson. Mich. 25
Geo. 2.

MOTION by Plaintiff, and Rule to shew Cause why a Nonsuit at last *Yorkshire* Affizes should not be set aside. Plaintiff at the Trial had offered in Evidence an unstamped Copy of a Record of Proceedings at the Sessions of the Peace; to which Defendant's Counsel objecting the Want of Stamps, the Plaintiff's Counsel gave up the Point, and submitted to a Nonsuit; though on looking into the Acts of Parliament since, it appears, that no Stamps on such Copy of a Sessions Record are requisite. *Per Curiam*: The standing Rule is, that if a Nonsuit be regular, the Parties are out of Court, and it cannot be set aside; if irregular, it is not considered as a Nonsuit. Lord Chief Justice not quite satisfied with this Rule; but till the Judges of all the Courts of *Westminster* agree to alter it, the Rule must stand. If the Courts were to set aside regular Nonsuits, the Merits of Causes and Points of Law would be brought into Question on Motions. *Prime* for Defendant; *Bootle* for Plaintiff.

Beere against Brooking. Mich. 26 Geo. 2.

ISSUE joined, and Notice of Trial given for last Sitting in *London* within last Term; but a Mistake being discovered in the Declaration, Plaintiff did not proceed to Trial. Defendant applied for Judgment as in Case of a Nonsuit, and obtained a Rule to shew Cause. On hearing Counsel on both Sides, the Issue-Roll not being struck into the Bundle, and the Amendment being small, the Court gave Plaintiff Leave to amend his Declaration, on Payment of Costs of Application, and for not proceeding to Trial; and appointed a peremptory Day for Trial. *Draper* for Plaintiff; *Willes* for Defendant.

Bentley against Scott and another, in Replevin. Easter
26 Geo. 2.

PRIME, for Defendant, moved for Judgment as in Case of Nonsuit. *Poole* for Plaintiff endeavoured to distinguish this from

from Common Cases, because in Replevin Defendants might, in the first Instance, have carried down the Record to Trial. *Per Cur*: The Act of Parliament has made no Distinction.

Margerum against Fenton. Trinity 26 & 27 Geo. 2.

Nonpros signed for Want of Plaintiff's entering Issue, set aside as irregularly signed one Day before the Time limited by Rule for entering the Issue expired. The Rule runs, "Unless Plaintiff within four Days next after Notice shall cause the Issue to be entered," which excludes the Day of Notice. The Rule was served Friday 22d of June, and the Issue-Roll brought in Tuesday following, on which Day the Nonpros was signed. *Wilson* for Defendant; *Willes* for Plaintiff.

Eagles and another against Osbaldestone, &c. Hilary
31 Geo. 2.

SP E C I A L Action on the Case by Plaintiffs against Defendant; for suffering an insolvent Debtor to be discharged without Opposition, though retained by Plaintiffs as their Attorney to oppose the same; Plaintiffs not having proceeded to Trial last Term, as they might have done, Defendant by Motion in Court obtained a Rule to shew Cause, why Judgment as in Case of Nonsuit; whereupon Plaintiffs obtained a Side-bar Rule to shew Cause, why they should not have leave to amend their Declaration, by striking out an Allegation, that they paid Defendant several Sums of Money. The whole Matter coming on in Court, the Side-bar Rule for amending the Declaration was discharged, and the Rule for Judgment as in Case of Nonsuit made absolute. *Hewitt* for Defendant; *Davy* for Plaintiffs.

Outlawry.

Osborne *against* Carter. Easter 6 Geo. 2.

Defendant taken on a *Capias utlagat* on a Sunday, moved to be discharged, the Taking being contrary to the Statute 29 C. 2. The Court held the Taking bad ; but refused to grant an Attachment, and put the Defendant to take the Remedy given by the Statute.

North *against* Chambers. Mich. 7 Geo. 2.

BAYNES moved for Defendant, that Plaintiff might reverse an Outlawry at his own Expence, upon Affidavits that Defendant, at the Time he was returned outlawed, and long before and after, was abroad in Parts beyond the Seas. Denied *per Cur*, because this is Error, and not proper to be considered as an Irregularity.

Peach *against* Wadland. Mich. 11 Geo. 2.

Plaintiff having commenced a Proceeding to Outlawry against Defendant, Defendant gave Notice to Plaintiff that he had appeared, and obtained a *Superfedeas* to the Exigent. Plaintiff searched at the *Compter*, and no *Superfedeas* being allowed there, Defendant was returned outlawed, who moved to set aside the Outlawry. On shewing Cause, Defendant alledged he had entered an Appearance with the Exigenter ; but that appeared to be unnecessary, and a novel Imposition by the Exigenter, whose Appearance Book is two Years old only. The Court held, that the *Superfedeas* is in itself an Appearance, if delivered to the Sheriff before the Return of the Exigent ; but that not having been done in this Case, Defendant is regularly outlawed ; and the Rule to shew Cause why the Outlawry should not be reversed at Plaintiff's Expence, was discharged. *Eyre* and *Agar* for Plaintiff ; *Draper* for Defendant. Vide *Watson's* printed Rules, fol. 69 and 78.

Blunt *against* Beale. Easter 11 Geo. 2.

P RICE moved, That Plaintiff might reverse an Outlawry at his own Expence, Defendant being in Parts beyond the Seas at the Time he was outlawed. *Per Cur'*: Defendant may take Advantage of this by Writ of Error, 'tis not Matter of Irregularity. No Rule.

Bennett *against* Sydenham. The same *against* Skinner.
Mich. 12 Geo. 2.

BAKER, Attorney for Plaintiff. Motion by *Eyre* and *Draper* for Defendant to reverse Outlawries on common *Clausum fregit* at Plaintiff's Expence, on Affidavits of Defendant's publick Appearance and Dealings, sworn by themselves only. *Per Draper*, Act to prevent vexatious Arrests directs Process to be served where no Affidavit is made of the Debt; and an Outlawry can only be supported by Process to arrest. It appears, that Plaintiff's Demand on Defendant *Sydenham* is no more than 15s. 6d. and on Defendant *Skinner* 1l. 5s. *Wright* for Plaintiff urged, That where Defendants cannot be come at to be personally served with Process, Plaintiff has no Remedy but an Outlawry. *Per Cur'*: Let the Rule be enlarged 'till next Term, that *Baker*, Plaintiff's Attorney, may in the mean Time make Satisfaction to the Parties.

Holman *against* Brasier. Hilary 12 Geo. 2.

RULE to shew Cause why Outlawry should not be reversed at Plaintiff's Expence. It appeared, that two Writs had been sued out, and Defendant could not be arrested: He lived on the Confines of *Surry* and *Kent*, and when *Surry* Bailiff came to arrest him, jumped over a Hedge into *Kent*, and put Bailiff to Defiance. *Per Cur'*: Though Defendant is sworn to appear publickly, yet 'tis plain he kept out of the Way to prevent being arrested. Rule discharged. But by Consent Debt and Costs to be paid out of the Money in Sheriff's Hand, and Overplus repaid to Defendant. *Draper* for Plaintiff; *Boote* for Defendant.

Speed

Speed *against* Barber. Mich. 15 Geo. 2.

RULE to shew Cause why Proceedings on the *Exigent post Ca. sa.* should not be stayed, was made absolute. The *Exigent* bore *Teste* 29th *May* last, and after that Day, and before the Return, Defendant became a Prisoner in the *Fleet*, at the Suit of a third Person. It was notorious at *Chester* that Defendant was become insolvent, and had assigned his Effects for the Benefit of his Creditors. *Steele*, Plaintiff's Agent, was told by *Kent*, Defendant's Agent, that Defendant was in Custody; the *Exigent* was not yet returned, but remained in the Sheriff's Hands. *Per Cur'* :] The *Exigent* was well sued out before Defendant's Commitment to the *Fleet*, and no Notice of that Commitment was given to Plaintiff's Agent till after the *Exigent*, but the Outlawry will signify nothing, because it may be reversed by Writ of Error. Let the Rule be absolute, and Plaintiff may charge Defendant in Execution. 2 *Roll's Abr.* 804. pl. 3. where Defendant goes beyond the Seas after the *Teste* of an *Exigent*, he may be regularly outlawed. *Wynne* for Defendant; *Willes* for Plaintiff.

White *against* Dunster.

Defendant was waived specially on mesne Process as a single Woman, by the Name of *Dunster*; and after the *Exigent*, and before the Outlawry, she married one *William Prifeley*, viz. in *February* 1740; in *August* 1741 she was taken by the Name of *Dunster*, by a *Capias Utlagat'*, and a Rule was obtained to shew Cause why the Outlawry should not be reversed at the Expence of *William Prifeley*, on his entering a common Appearance for himself and his Wife: But the Rule was discharged, the Court refusing to interpose, as the Marriage was after the *Exigent*. *Bootle* for Defendant; *Belfield* for Plaintiff.

Heely *against* Hewson. Easter 16 Geo. 2.

IT appeared that pending the *Exigent*, Defendant was a Prisoner in the Gaol for the City of *York*; for which Reason the Court ordered the Outlawry to be reversed, without Payment of Costs

to Plaintiff, upon Defendant's entering a common Appearance.
Birch for Plaintiff; *Bootle* for Defendant.

Farnworth *against* Smith. Hilary 18 Geo. 2.

RULE to shew Cause why Outlawry should not be reversed, at Plaintiff's Expence. Objected, on the Part of Defendant, That he was a publick visible Man, and Plaintiff had not endeavoured to arrest him. That the *Capias*, *Alias*, and *Pluries*, were all sued out at one and the same Time. That no Affidavit of the Debt was indorsed on the Writs (though bailable) pursuant to the Statute to prevent vexatious Arrests. That no Date was put to the Writs, as required by the Statute. The Affidavits as to Defendant's Visibility were fully answered, and his total Absconding proved. And the Court held, That in case of a total Absconding, no Endeavours to arrest are necessary. That Suing out the *Capias*, *Alias*, and *Pluries* together, was regular, and warranted by constant Practice. That on Process to the Outlawry, no Affidavit for Bail is required by Statute, or the Course of the Court; nor is a Date to such Process usual. The Rule discharged, without Costs. *Prime* for Plaintiff; *Draper* for Defendant.

Dale, Widow, *against* Robinson, Clerk. Mich. 20
 Geo. 2.

Objected by Defendant, who had been outlawed on the Prosecution of the Plaintiff, That he was a publick visible Man, and that the Return of the Proclamation was bad; it importing, that Proclamations were made as the Sheriff was by the Writ commanded, but not where or according to the Form of the Statute. Defendant's being a publick visible Man was fully denied; and it was fully proved that he absconded, and his Living was under Sequestration. The Court seemed to think the Return of the Proclamation sufficient. *Frustra fit per plura, &c.* but said, Defendant might, as to it, bring a Writ of Error, if so advised. The Rule to shew Cause why the Outlawry should not be reversed at Plaintiff's Expence was discharged, *Skinner* for Defendant; *Willes* for Plaintiff.

Withall.

Withall *against* White.

AFTER the Return of the *Exigent*, but whilst it remained in the Hands of the Sheriffs of *London*, and before Defendant was returned Outlawed, the Court made a Rule, That a *Superfedeas* to the *Exigent* should be allowed, on Payment of Costs. *Vide General Rules*, 17 *Cha. 2. & 2 Jac. 2. Prime* for Defendant; *Willis* for Plaintiff.

Wiat *against* Parker. Trinity 21 Geo. 2.

Defendant outlawed, after Judgment moved to set aside the Outlawry for Want of a Proclamation. *Per Cur'*: This is not a fit Matter to be determined in a Summary Way. Defendant may bring a Writ of Error. *Cro. Jac. 577.*

French *against* Manby. Mich. 27 Geo. 2.

A Writ of *Allocatur* on the *Exigent* had issued (after Judgment and *Ca. sa.*) returnable on the Morrow of *All Souls* last, 3d *November* 1753, whereupon Defendant was returned to be outlawed (*Quinto exactus*) 16th *July* 1753. It appeared, that Plaintiff died 6th *August* 1753, and that a Commission of Bankrupt issued against Defendant 21st same *August*. Defendant obtained a Rule to shew Cause why Proceedings should not be stayed, which Rule was discharged; the Court being of Opinion, That the Writ and Return must be filed, notwithstanding Plaintiff's Death after the Day of Outlawry, but before the Return. Before an actual Assignment by Commissioners of Bankruptcy, the Crown is not bound; though there is a great Difference between an Extent in Aid *pro Rege*, and an Outlawry for a private Person's Debt. Here is no Foundation to tie up Plaintiff's Hands; he may proceed, if he shall be so advised. *Prime* for Defendant; *Wilson* for Plaintiff.

Ashley, Esquire, *against* Stockwell, Esquire, and Husband, Esquire.

THREE several Outlawries had been pronounced about a Year ago, and transcribed into the *Exchequer*; one against both Defendants, a second against Defendant *Stockwell*, and a third against Defendant *Husband*; all at Plaintiff's Prosecution. *Pennold* and *Roberts*, authorized by Power of Attorney executed by Defendants, applied on their Behalf, and obtained a Rule to shew Cause why these Outlawries should not be reversed, at Plaintiff's Expence; Defendants at the Time when the Writs of *Exigent* issued and still being in Parts beyond the Seas. On shewing Cause by Plaintiff it appeared, that Defendants had been abroad three Years, and probably never intended to return to *England*; and it was urged, that as they stayed abroad longer than their lawful Occasions required, such Stay must be looked upon to be with a View to defeat Justice; and consequently they were duly outlawed. That if not, they ought to bring their Writ of Error, and should not be relieved in this summary Manner by Motion. The Court thought it discretionary in them to relieve by Motion, or put the Parties to a Writ of Error, according to the Circumstances of the Case. Courts have gone further of late Years than heretofore, on Motions, as more effectual to expedite Justice, save Expence, and preserve Credit and Character. It is difficult to determine, when Defendants Stay abroad to avoid Process shall be taken to commence. There is no sufficient Foundation for the Court to order Plaintiff to reverse these Outlawries at his own Expence. But as they are not special, but only in Trespass *Quare clausum frogit*, Defendants have a Right to reverse them at their own Expence, on entering common Appearances, and Payment of Costs. Rule made accordingly. Defendants, before the Outlawries were transcribed into the *Exchequer*, might have reversed them, on entering common Appearances and Payment of common Costs, as far as the *Exigent*; but now, after they are transcribed, Costs must be paid to the Time of Reversal. *Prima* for Defendants, *Willes* for Plaintiff.

The King *against* Manby, on the Prosecution of French
(deceased.) Easter 27 Geo. 2.

Defendant was outlawed after Judgment, and taken by a *Capias utlagat'*. Objected by *Prime* for Defendant, That the Judgment of Outlawry appeared to be entered after Plaintiff's Death; and that the *Capias utlagat'* issued without a Revival of the Judgment. He quoted *Brownlow's Brevia judicialia*, and the Register of Judicial Writs, fo. 42. A. B. to shew Writs of *Scire facias* in such Cases brought by Plaintiff's Executors. Rule absolute to set aside *Capias Utlagatum..* *Wilson* for the late Plaintiffs,

Reilley *against* O'Connor, Esquire. Mich. 29 Geo. 2.

THE Outlawry commenced and compleated during Defendant's Residence in *Ireland*, was ordered to be reversed at his Expence (without Bail or Appearance.) Where the Court see an unlawful Proceeding they will not put the Party to the Expence of a Writ of Error, but will avoid Circuitry and relieve him in a summary Way. *Prime* for Defendant; *Willes* for Plaintiff.

Barclay *against* Green. Hilary 30 Geo. 2.

Defendant was outlawed while resident at *Jamaica* for a Debt contracted in *England*, and was abroad when the Proceeding to Outlawry was first commenced. Motion by *Prime*, That the Outlawry be reversed at Plaintiff's Expence with Costs. *Vide antea*, *Reilley against O'Connor*, Esq; *Mich. 26 Geo. 2.* Rule made to shew Cause; upon shewing Cause, Defendant appeared to be an absconding Person, and that the Motion though in his Name was not made by him, but by a third Person, and the Matter appearing to be a Contention between Creditors, the Court would not exercise a discretionary Power so as to relieve Defendant in a summary Way; Plaintiff has had no Recompense for his Debt, the Court will not take from him the legal Advantage he has

got, Defendant if he thinks fit may bring his Writ of Error. The Rule discharged. *Prime* for Defendant; *Davy* for Plaintiff.

Challing *against* Fox. Mich. 31 Geo. 2.

WRIT of *Superfedeas* to an *Allocatur* to the *Exigent* could not be sealed in the Morning of the Day, whereon the *Allocatur* was returnable, being Holiday; but was sealed, and brought to the Sheriffs Office *London*, in the Afternoon about half an Hour after Defendant was returned outlawed, the Proceeding was by special Original in an Action on the Case on Promise, wherein the Damages were expressed requiring Bail. Motion and Rule to shew Cause why Defendant should not have Leave to appear, and *Superfede* the *Exigent* on Payment of Costs. Upon shewing Cause the Court was not willing to strip the Plaintiff of an Advantage which he had fairly and regularly obtained: Before a Defendant is returned outlawed he may *Superfede* the *Exigent*, though founded on a special Original, and though the Debt be ever so large (as the old Practice still continues). But after he is returned outlawed he cannot reverse the Outlawry without Bail, who are to be absolutely bound to pay the Money without Power to render the Principal in their Discharge. Ordered that Proceedings on the Outlawry be stayed on Payment of Plaintiff's Debt and Costs within a Month, but in Default Rule discharged, and Plaintiff at Liberty to proceed on the Outlawry. *Prime* for Defendant; *Poole* for Plaintiff.

Oyer, &c.

Barber, Assignee of the Sheriff, *against* Satchwell, on a Bail-Bond. Trin. 17 & 18 Geo. 2.

BY a Judge's Order Defendant was allowed two Days Time to plead, which expired 30th *May*. On the Day following, [31st *May*] Oyer of the Bail-Bond was demanded; which De-

mand, after the Time for Pleading expired, Plaintiff looked upon as a Nullity, and signed Judgment; which was held to be regular, and the Rule to shew Cause why the Judgment should not be set aside, was discharged. The Court seemed to think [*Capitalis Justic' solus*] that it was reasonable Oyer might be demanded any Time before Judgment, but would not overturn the established Practice. *Skinner* for Defendant; *Willes* for Plaintiff.

The Weavers Company against Ware. Action on a
By-Law. Mich. 18 Geo. 2.

Defendant prays Oyer, and a Copy of the Letters Patent set forth in the Declaration with a *Profert in Cur'*, and Plaintiffs give him Oyer and a Copy, for which Copy Defendant pays, and afterwards doth not make the Oyer Part of his Plea, but pleads the General Issue, *Non cul'*; Plaintiffs make up the Issue with Oyer; Defendant moves that the Oyer may be struck out of the Issue; and upon hearing Counsel on both Sides, the Motion was denied, *Draper*: Giving Oyer is the Act of the Court, and when set out, is Part of the Declaration. Letters Patent are a Record, and *Non Concessit* pleaded doth not deny the Letters Patent, but the Operation thereof only. Action on Bail-Bond, in the Declaration not laid that the Bond was given to the Sheriff *per Nomen Officii*; Defendant pleads *Non est factum*, Plaintiff in his Replication sets out the Bond by Way of Oyer, to help the Defect in the Declaration. *Per Cur'*: Plaintiffs may by Replication pray an Inrolment *in hæc verba*, but cannot make Defendant pray Oyer in his Plea upon Record whether he will or no. Where Oyer is prayed, Plaintiffs have a Right to make the Oyer Part of Defendant's Plea. If no Oyer is prayed, an Inrolment proper. If Oyer prayed, no Inrolment. The Pleadings are supposed to be *Ore tenus* at the Bar, and a Record is to be made of what is done there. *Bootle* for Defendant; *Draper* for Plaintiff, Cases cited for Plaintiffs, *Plow.* 491. 20 *H.* 7, 8. *Dyer* 133, 187. *Cro. Jac.* 679. *Stonehouse* against *Read*, 1 *Lut.* 680. *Blewit* against *Appleby*, *C.* *Lit.* 260, *a. Brook*, *Tit. Record. Aliter in Banco Regis*, *Mich.* 19 *Geo.* 2.

Pauper.

Easter 8 Geo. 2.

A Poor Man, Defendant in a Suit brought in this Court, applied in the *Treasury* to be admitted to defend in *forma Pauperis*, but was denied : The statute for admitting *Paupers* extends to Plaintiffs only, and not to Defendants. 11 Hen. 7. cap. 12.

Pleadings and Time to plead.

Gibson *against* Cole. Hil. 6 Geo. 2.

A Rule to plead double, (*viz.*) *Non Assumpsit*, and a General Release discharged, because these Pleas are contradictory.

Cortizos *against* Munoz. Trin. 6 & 7 Geo. 2.

D E M U R R E R was joined in *Michaelmas* Term last, argued in *Hilary*, and Judgment given for Plaintiff. Defendant brought a Writ of Error, intending to assign for Error the Want of an Original : Whereupon Plaintiff entered the Demurrer and Judgment on a Roll of *Hilary*, having obtained an Original of that Term, though he had none of *Michaelmas*. Defendant moved that the Demurrer might be entered of *Michaelmas* Term ; and upon hearing Counsel on both Sides, it appearing that the Demurrer was joined of that Term, the Court ordered it to be entered accordingly, pursuant to a general Rule of Court formerly made upon Complaint of the Clerk of the *Treasury*, that all Issues shall be entered of the same Term wherein they are joined. *Baynes* for Defendant ; *Chapple* for Plaintiff.

Halley

Halsey *against* Feltham.

THIS was an Action of Trespafs for entering Plaintiff's Close, and pulling down a Were. Defendant moved to plead double, (*viz.*) *Liberum tenementum*, and a Justification of pulling down the Were as a Nuisance, and a Rule *Nisi* was obtained; but was afterwards, on hearing Counsel on both Sides, discharged by the Court, the Matters prayed to be pleaded being inconsistent. *Baynes* for Defendant; *Chapple* for Plaintiff.

King *against* Boswell. Mich. 7 Geo. 2.

DEFENDANT obtained a Rule *Nisi* to plead double, *Non Assumpsit* and *Non Assumpsit infra sex annos*. Plaintiff shewed for Cause, that the Rule to plead was expired before the Motion to plead double was made; but Court held that Defendant was proper to move to plead double any Time before Judgment signed. *Birch* for Plaintiff; *Comyns* for Defendant.

Hartley *against* Varley, Hil. 7 Geo. 2.

SKINNER moved for *Oyer* of the Bond whereon this Action was brought, upon an Affidavit that it was not for Delay, but in order to plead Payment agreeable to the Fact; but the Court refused to make any Rule, *Oyer* not having been demanded in proper Time, (*viz.*) before the Rule for pleading expired.

Dursley *against* Cole.

THIS was an Action brought against an Inn-keeper for detaining two Horses of Plaintiff's. *Eyre* moved to plead double, (*viz.*) Not guilty, and an Accord and Satisfaction, which he would have compared to *Non Assumpsit*, and *Non Assumpsit infra sex annos*. *Hawkins* opposed the Motion. The Court denied to make any Rule, the Matters prayed to be pleaded being contradictory.

Martindale against Galloway, Executor, &c.

DARNALL moved for Defendant that he might have Leave to withdraw his Plea of Judgments, and Bonds pleaded in Bar, and plead *Plene administravit*, which, upon hearing *Chapple* for Plaintiff, was granted by the Court.

Reeves against Probart.

URLIN moved that Defendant might have Leave to withdraw his Plea of Tender, and plead the General Issue upon Payment of Costs. The Court denied the Motion, because this Alteration of the Plea would put Plaintiff to an Inconvenience, the Money pleaded to be tendered being brought into Court.

Hughes against Pellett, Administrator, East. 7 Geo. 2.

DEFENDANT had obtained an Order for Time to plead, pleading an issuable Plea, &c. and afterwards pleaded in Bar to the Plaintiff's Action (which was upon simple Contract) a Judgment confessed upon a Bond since the Order for Time to plead made. Plaintiff moved to set aside the Plea; but the Court upon hearing Counsel on both Sides, were of Opinion, that as there was no particular Restraint in the Order, and as the Bond (whereupon the Judgment was confessed) might have been pleaded in Bar to this Action, the Plea must stand. *Baynes* for Defendant; *Chapple* for Plaintiff.

Poole against Broadfield.

DEFENDANT pleads Bankruptcy, and concludes with an Averment, and not to the Country; to which Plaintiff demurred. Court held the Plea bad, and gave Judgment for Plaintiff. *Chapple* for Plaintiff.

Humphreys *against* Ward. Trin. 7 & 8 Geo. 2.

COURT were of Opinion, that a Plea in Abatement, after the Rule for Pleading is out, is a Nullity, and Plaintiff may sign his Judgment. *Hawkins* for Plaintiff; *Baynes* for Defendant.

Smith *against* Roe.

In Ejectment. **D**ECLARATION of *Easter* Term to appear in *Trinity*. *Skinner* moved to be at Liberty to plead Ancient Demesne. A Rule was made to shew Cause; upon shewing Cause it was insisted for Plaintiff, that the Plea being to the Jurisdiction of the Court, is a Dilatory, and ought to have been pleaded within the first four Days of this Term; and of that Opinion were the Court, and discharged the Rule. Sir *George Cooke* quoted two Cases in Point, determined in this Court, *Holdfast against Carlton*, Hil. 1 Geo. 2. and *Bingham against Barker*, Trin. 2 Geo. 2.

Adkin *against* Worthington, an Attorney.

EYRE for Defendant demurred, and shewed for Cause, that in the Memorandum it is not said, Whether the Bill was in a Plea of Debt or Case, or in what Plea. *Chapple* for Plaintiff argued, that the Bill is set out *in hac verba*, and shews itself. Judgment for Plaintiff.

Benn *against* Geary.

A Rule was made for Plaintiff to shew Cause why Defendant should not plead double, (*viz.*) *Non Assumpsit* and *Non Assumpsit infra sex annos*, Plaintiff, on shewing Cause, produced an Affidavit that Defendant had not appeared, and consequently not being in Court was not proper to make the Motion. Rule discharged. *Chapple* for Plaintiff; *Birch* for Defendant.

Heathfield *against* Allen. Mich. 8 Geo. 2.

SKINNER for Defendant moved to plead double. *Non Assumpsit* and *Plene Administravit*, which was denied by the Court, no Affidavit being produced that Defendant had fully administered.

The Burgeffes of Wisbech *against* Frier.

URLIN moved for Defendant to plead double, *Solvit ad diem* and *Riens per Discent*. *Skinner*, for Plaintiff, objected, that an Affidavit of the Fact as to *Riens per Discent* ought to be produced from the Heir, as from an Executor or Administrator in a *Plene Administravit*, and the Objection was held good. No Rule.

Peirson *against* Ives. Hil. 8 Geo. 2.

DEFENDANT pleaded *Non Assumpsit infra sex annos*, and Plaintiff demurred to the Plea : the Matters in Question being Actions between Merchant and Merchant ; and Defendant thereupon moved to add to his former Plea a general *Non Assumpsit*, upon Payment of Costs ; but this was denied.

Burnand *against* Standing.

In Formedon. **DEFENDANT** pleaded Never Tenant of the Freehold in Abatement, and Plaintiff refused to accept the Plea ; whereupon Defendant applied to the Court, and upon hearing Council on both Sides, the Plea was ordered to be received. It cannot be pleaded otherwise than in Abatement. *Baynes* for Defendant ; *Darnall* for Plaintiff.

Nicholson *against* Constable, Attorney. Easter 8
Geo. 2.

PLAINIFF declared with a Memorandum upon a Bill, but omitted in the Memorandum the Words (*in a Plea of Trespass upon the Case.*) Defendant demurred, and shewed this Omission specially for Cause. *Per Cur'*: The Plea appears by the Bill, which is set forth *verbatim* in the Declaration. Judgment for Plaintiff. *Comyns* for Plaintiff; *Glyde* for Defendant. *Adkin against Worthington.* Attorney. *Trin. 7 & 8 Geo. 2.*

Jarratt *against* Robinson.

HAWKINS moved to plead double, (*viz.*) *Non Assumpsit*, and several Matters set off against Plaintiff's Demand, which was denied *per Cur'*, as contradictory. The General Issue must be pleaded, with Notice to set off, pursuant to the Statute.

Marshall *against* Lawrence. Trinity 8 & 9 Geo. 2.

SKINNER moved to plead double, *Nil debet* and *Nil habuit in tenementis*. Refused. *Per Cur'*: The latter may be given in Evidence upon the former.

Jury *against* Woodhouse and others, Executors.

UPON the Trial of a Cause at *Nisi Prius*, in *Middlesex*, against the Defendants, at another Plaintiff's Suit, the Lord Chief Justice held a Leasehold Estate (though not sold) Assets in Defendant's Hands, *ad valorem*; and thereupon by Consent, Proceedings were ordered to stay in the former Action until the Estate could be sold. *Chapple* now moved that Plaintiff might perfect his Judgment in the former Action, and that Defendant might have four Days Time to plead that Judgment in Bar to this Action. *Darnall*, for Plaintiff, opposed the Motion; and it appearing that Defendants had

had obtained the Chief Justice's Order for four Days Time to plead, which were expired, pleading to Issue, and taking Notice of Trial within Term, the Court refused to grant any Rule.

Handafyd against Wilson. Mich. 9 Geo. 2.

DEFENDANT pleaded to the *Sci. Fa.* upon his Recognizance of Bail, Payment by the Principal; to which Plaintiff replied Nonpayment, and tendered an Issue; whereupon Defendant demurred, and Plaintiff joined in Demurrer, moved for *Concilium*, and set down the Cause in the Paper to be argued. Defendant afterwards moved to withdraw his Plea, and plead *Nul tiel Record* of the Recognizance, which was denied by the Court on hearing Council on both Sides. *Skinner* for Defendant; *Chapple* for Plaintiff.

Raine against Spencer.

DEFENDANT pleaded Coverture as the Wife of *John Thompson*, in this Manner, (*viz.*) *And the aforesaid Sarah Spencer, &c.* Her Affidavit was in the same Stile, but signed *Sarah Thompson*: The Plea was set aside. *Chapple* for Plaintiff; *Skinner* for Defendant.

Napper against Biddle.

THE Declaration was of *Michaelmas* Term last, and Defendant pleaded in Abatement the fourth Day within *Hilary* Term then next, without a Special Impar lance. Plaintiff demurred to the Plea, and Defendant joined in Demurrer; whereupon Plaintiff made up the Book with a General Impar lance, and the Cause was set down in the Paper to be argued. *Chapple* moved for Defendant, that the General Impar lance might be struck out of the Paper Book; insisting that the first four Days of *Hilary* Term were *ex gratia*, and that Defendant might then plead as of *Michaelmas* Term before. The Motion was opposed by *Belfield*, and no Rule was made; the Court declaring that in this Case Defendant could not plead in Abatement without procuring a Special Impar lance.

Macdonald

Macdonald *against* Gunter. Hilary 9 Geo. 2.

FORREST (Plaintiff's Attorney) delivered a very long Declaration for entering Plaintiff's House, and taking and carrying away his Goods. *Forrest* had in every Count repeated the Particulars contained in an Inventory of Defendant's Goods taken at the Time they were distrained for Rent, on account of which Distress this Action was brought, with some small Variation in the Description of the Goods, and laying the Trespasses on different Days. Court, upon hearing Counsel on both Sides, (it appearing that the Action was brought for one and the same Trespass,) ordered two of the Counts to be struck out, and *Forrest* to pay Costs. *Wright* for Defendant; *Comyns* for Plaintiff and *Forrest*.

Hutchins *against* Lillyman.

DEFENDANT's Attorney not being to be found, the Declaration was delivered to Defendant himself, and for want of a Plea Plaintiff signed Judgment. The Declaration was held to be irregularly delivered; but by Consent, Matters in Difference were referred to the Prothonotary.

Newberry *against* Strudwick. Easter 9 Geo. 2.

ACTION of Debt brought on Judgment. Defendant pleads that Plaintiff had recovered a Judgment in *B. R.* To this Plaintiff replies *Nul tiel Record*, and delivers the Issue with a Day given in it for Defendant to bring in the Record at his Peril. Defendant insists that the Replication of *Nul tiel Record* should not be delivered in the Issue-Book, and Day given to bring in the Record, but that Plaintiff should give him the Replication by itself in Form, and give a Rule to rejoin, therefore moved that Plaintiff should take back the Issue delivered, and deliver a Replication in Form, and also repay the Money he took for the Issue. Rule to shew Cause. Upon shewing Cause, the Court were of Opinion that a Rejoinder in this Case is totally unnecessary after a complete Issue joined, and the Delivery

livery of the Issue was right. Rule discharged. There is no Difference between a Record of this Court pleaded, and a Record of another Court; the Issue is compleat upon the Replication without the Rejoinder. Where Defendant avers the Record, and Plaintiff gives him a Day to bring it in, the Conclusion of the Replication is as follows, *viz.* *Et hoc parat' est verificare qualitercunque, &c. Et dictum est præfat' Def' quod habeat Recor'd' ill' hic in Oclab. Pur' Beatæ Mariæ sub periculo suo, &c. Item dies dat' est præfat' quer' hic, &c.* Where the Plaintiff avers the Record, the Conclusion of the Replication is thus, *viz. and prays that that Record may be seen and inspected by the Justices here, &c.* And because the said Plaintiff hath not now that record ready here in Court, he is directed that he have that Record here in eight Days of *St. Martin*. The same Day is given to the said Defendant here, *&c.* *Belfield* for Plaintiff; *Corbet* for Defendant.

Sydebotham *against* Frith, Attorney.

THE same Case and the same Determination as in *Aikin against Worthington*, *Trin. 7 & 8 Geo. 2.* *Comyns* for Plaintiff; *Belfield* for Defendant.

Stibbs *against* Neeves. Trinity 10 Geo. 2.

In Trespass. **B**OOTLE moved for Defendant for Leave to plead doubly, *viz. Non cul'* and *Liberum tenementum* of the Liberty of *St. Catherine's*, and obtained a Rule to shew Cause, which was afterwards made absolute upon an Affidavit of Service, no Cause being shewn.

Pease *against* Badtitle.

In Ejectment. **W**YNNE moved after the first four Days of Term to plead ancient Demesne, which was denied. It is a Plea to the Jurisdiction of the Court, and ought to be moved within the first four Days of the Term.

Recks and Wife *against* Robins.

Defendant being served with Process at the Suit of *Recks* appeared, and a Declaration was delivered; a Declaration was also delivered by the By at the Suit of *Recks* and Wife. Defendant applied to have the Proceedings staid on the Declaration by the By, there being no Process to warrant it; for though by the Practice of the Court Plaintiff might the same Term the Process is returnable declare against Defendant as often as he would at his own Suit, yet he cannot declare by the By joined with his Wife or any other Person, and there is greater Reason for it since the Statute to prevent vexatious Arrests, which requires Process to be served. The Proceedings in the Declaration by the By stayed. *Chapple* for Defendant; *Eyre* for Plaintiff.

Davenhill *against* Barritt. Mich. 10 Geo. 2.

AFTER Defendant had obtained a Judge's Order for Time to plead, pleading an issuable Plea, he pleaded a Tender; which Plea was set aside as a Plea that could not be pleaded after Time to plead obtained. *Birch* for Plaintiff; *Eyre* for Defendant.

Sherlock *against* Templer.

Defendant had demurred generally, and now moved for Leave to withdraw the Demurrer, and plead the General Issue. It was objected by Plaintiff, that by this Means he had been delayed of a Trial at last Assizes; but it appearing that the Parties had been before a Judge, and that Defendant had offered to withdraw his Demurrer, and plead the General Issue, Time enough for Plaintiff to have tried his Cause at last Assizes, the Motion was granted. *Chapple* for Defendant; *Eyre* for Plaintiff.

Bird *against* Spincks.

In Replevin. **T**HE Court gave Leave to plead doubly, viz. that Plaintiff in Replevin had not property, and a Justification as a Distress for Rent. *Chapple* for Defendant; *Parker* for Plaintiff.

Leighton *against* Leighton.

AFTER a Judge's Order for Time to plead, pleading an issuable Plea, Defendant moved to plead double Matter, and the Question was, Whether a Rule for that Purpose ought to be granted or not? The Court took Time to consider, and after conferring with the Judges of the other Courts, gave Defendant Leave to plead doubly, pleading issuable Pleas, and taking short Notice of Trial. *Wright* for Defendant; *Hayward* for Plaintiff.

Shelly *against* Wright. Hilary 10 Geo. 2.

IN the Margent of the Declaration stood the Word *Middlesex*, and Defendant's Addition was *late of Westminster*, without saying in the County aforesaid. Defendant pleaded in Abatement, that it did not appear by the Declaration at what Place he was commorant. Plaintiff moved to set aside the Plea, and obtained a Rule to shew Cause, which was discharged. It is not usual to set aside such Pleas upon Motion. Plaintiff may demur if he thinks fit, as determined between *Norris* and *Friend*, *Hil. 4 Geo. 2.* *Skinner* for Plaintiff; *Hawkins* for Defendant.

Nevil *against* Fisher.

Defendant had pleaded *Non assumpsit infra sex annos*, and moved to add to that Plea *Non assumpsit* generally, which was denied. After Defendant hath pleaded a single Plea, he cannot have Leave to plead doubly. *Skinner*.

Barnett

Barnett *against* Greaves.

In Trespass. **K**ettleby moved to plead doubly, Not guilty, and a Justification, which was denied as contradictory.

Buck *against* Warren, Attorney, in Case. Easter 10
Geo. 2.

On Promise. **D**efendant paid 10*l.* into Court on the common Rule, and afterwards obtained a Rule to plead double, *Non assumpsit* and *Non assumpsit infra sex annos*. Plaintiff moved to set aside the double Plea with Costs, and had a Rule to shew Cause, which was made absolute. Plaintiff by the Rule to pay Money into Court is confined to plead the General Issue, and no other Plea. The Motion afterwards to plead double is an Imposition on the Court. *Chapple* for Plaintiff; *Gapper* for Defendant.

Crosse *against* Porter, Mich. 11 Geo. 2.

Plaintiff declared on a Recognizance of Bail without setting forth the Condition. Defendant demurred generally. Court gave Judgment for Plaintiff. The Recognizance in the Declaration does not appear to be conditional, but absolute; if conditional, Defendant might have pleaded *Nul tiel Record*. *Draper* for Plaintiff; *Comyns* for Defendant.

Church *against* Fendall. Easter 11 Geo. 2.

MOVED by *Agar* to plead two Justifications, *viz.* Damage-feasant, and under a Demise from Defendant to Plaintiff. Chief Justice said he thought them inconsistent; but as Defendant had obtained a Rule to shew Cause, and Plaintiff did not oppose it, the Rule must be absolute.

Ford *against* Burnham. Trinity 11 & 12 Geo. 2.

Defendant pleaded a Tender *ante diem impetracon' brevis Original'*. Plaintiff in his Replication set forth an Original purchased before the Time of the Tender pleaded. *Wynne* moved for Defendant for Oyer of the Original, but the Motion was denied. The Court never make any Rules for Oyer of Originals, which are Matters of Record.

Baynes *against* Lutwidge.

THE Court gave Defendant Leave to plead doubly, *viz.* a Distress for Damage-feasant, and for Rent in Arrear. This is not stronger than Not Guilty, and *Liberum Tenementum, Solvit ad diem*, and a mutual Debt, which have been granted. *Bootle* for Defendant; *Draper* for Plaintiff.

West *against* Nichols. Mich. 6 Geo. 2.

A *Clausum fregit* was issued in *English*, and Plaintiff declared in *Latin*. A Motion was made to stay the Proceedings, but denied, because the Declaration in *Latin* is to be taken as a Declaration by the By.

Lunn *against* Smith.

THE Writ was returnable *Craf. Trin.* and Bail filed in *Hilary* Term following. The Sheriff was amerced, and did not clear his Contempts till *Trinity* Term following, when Plaintiff tendered a Declaration, but Defendant refused to accept it; whereupon Plaintiff left it in the Office, and signed Judgment. The Question was, What Time the Plaintiff had to declare? And it was held by the Court, that he had two Terms to declare after Defendant was in Court; but this Declaration, not being delivered till the third Term after Bail put in, was too late, and the Judgment was set aside.

Androvin *against* Bassen, Bail for Miller, Hilary 6
Geo. 2.

THIS was an Action of Debt upon a Recognizance of Bail, wherein the Plaintiff had declared in the short Manner now practised, without setting out the Condition of the Recognizance. Mr. Justice Price had made an Order for an Imparance upon a Defect in the Notice given to Defendant of the Declaration being left in the Office, &c. Plaintiff moved to discharge the Order. Defendant on shewing Cause produced a Rule whereby the *Ca. Sa.* against the Principal was set aside, and alledged that no *Ca. Sa.* had been since returned, and the Record of the Recognizance not being filed, and Defendant not being intitled to Oyer thereof could not plead the Want of a *Ca. Sa.* against the Principal, if that Matter is pleadable to such short Declaration. The Court declared no Opinion, but seemed inclinable to think that the Condition of the Recognizance doth not operate by Defeazance, but is Part of the Recognizance itself, and that Plaintiff ought to set out the Condition in his Declaration, and ordered the Plaintiff to file the Record of the Recognizance, but gave him Liberty to withdraw his former Declaration, and declare *de novo* if he thought fit.

Catlin *against* Elliott, Hunt, and Drew, Hilary 7
Geo. 2.

UPON hearing Counsel on both Sides, three Declarations in Assault, Battery and false Imprisonment were ordered to be reduced into one, appearing upon the Face of the Declaration to be all for one and the same Fact, and in each of the three Plaintiff declaring against one of the Defendants for an Assault, &c. *simul cum* the other two. *Hawkins* for Defendants; *Birch* for Plaintiff.

Harper, an Attorney, *against* Woodhouse and others..

THREE Declarations for one and the same Battery being ordered to be reduced into one, Plaintiff's Counsel pray-
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ed Costs, but was denied. *Eyre* for Defendant; *Skinner* for Plaintiff.

Jeffs against Jones. Easter 7 Geo. 2.

TWO Actions were brought against the Defendant, one for an Assault and Battery, and the other in Trespass, for taking away Plaintiff's Goods. Defendant moved that the two Declarations might be reduced into one, being for one and the same Trespass. Rule made to shew Cause, which was afterwards discharged upon hearing Counsel on both Sides. Where there may be several Pleas, Actions ought not to be joined. *Chapple* for Plaintiff; *Hawkins* for Defendant.

Fotherby against Lloyd. Mich. 8 Geo. 2.

CCOURT held that a Declaration *de bene esse* may be delivered at any Time before the Expiration of the Time limited for appearing or putting in Bail, but never afterwards. This was a *Tf-tatum* from London to Bristol returnable *tres Mich.* and a Declaration was delivered *de bene esse* October 31, which was the last Day Defendant had by the Rules of Court to put in Bail. *Chapple* for Plaintiff; *Eyre* for Defendant.

Burnett against Kendall. Mich. 12 Geo. 2.

MOTION to set aside Plea in Abatement, which came in two Days after Declaration left at *King's* (Defendant's Attorney's) Chambers, under the Door, which was not found there till November 1. The Agent (Mr. *Buck*) had appeared by *King* the Country Attorney, and Plaintiff had given no Notice to *Buck* the Agent of Declaration being filed or left. *Cur'*: Whether the Plea came regularly in or not is the only Question, and the Declaration not being delivered, nor any Notice to *Buck* of its being filed, Let the Rule for setting aside the Plea be discharged with Costs, it being tricking Practice to put the Declaration under the Country Attorney's Chamber Door. *Skinner* for Defendant; *Umlin* for Plaintiff.

King *against* Nichols. Hilary 12 Geo. 2.

RULE to shew Cause why Defendant should not have Leave to plead a Tender as of last Term, notwithstanding the general Imparance given by Plaintiff. Objected by Plaintiff's Attorney, that Defendant ought to have applied on the first Day of the Term. *Per Cur'*: He comes Time enough within the first four Days. Rule absolute in the Treasury, *January 27*.

Jones *against* Body. Draper for Defendant; Comyns for Plaintiff. Easter 12 Geo. 2.

RULE made absolute to plead double, *Non Assumpsit*, and Defendant's Discharge under the Insolvent Debtors Act. 10 Geo. 2.

A Rule this Term, *Lisle against Jenyns*, had been made to shew Cause, and absolute on Affidavit of Service (no Cause being shewn) to plead *Non est factum*, and Defendant's Discharge under said Act.

Potts *against* Creswell, Attorney.

Defendant moved that Plaintiff might insert the true Day of filing Bill, (*viz. February 3*, last) in the *Memorandum* at the Head of his Declaration, and that Defendant might have Leave to plead a Tender of last Term, the Declaration not having been delivered till after the Term. The Rule to shew Cause was made absolute on hearing Counsel on both Sides. *Draper* for Defendant; *Agar* for Plaintiff.

Calvera *against* Pinhero. Trinity 13 Geo. 2.

Upon an Issue of **P**laintiff delivered the Book, and gave himself a Day to bring in the Record, *viz. tres Trin. July 8*. but did not bring in the Record on that Day. *July 9*. Plaintiff offered the Record, and moved it

might be read, which was refused by the Court, it not being brought in on the Day Plaintiff had given himself to produce it. *Wright* and *Hayward* for Plaintiff; *Burnett* for Defendant.

Usher, and others, *against* *Edmunds*. Mich. 13 Geo. 2.

MOTION by *Skinner* to withdraw his Plea of the General Issue, and plead the same *de novo*, and pay Money into Court. Defendant's Attorney happening to die before Payment of Money into Court as ordered by Defendant; and his Clerk having delivered the Plea by Mistake; Rule to shew Cause. *Agar* shewed Cause. *Cur'*: The Rules of the Court are against the Motion; but in the Accident of Death the Rules must be dispensed with, Rule absolute.

Lumley against *Foster*.

ATTORNEY swears to the Truth of Plea in Abatement: And the Question was, Whether Defendant should not have made Oath himself. *Per Cur'*: Probable Cause is shewn, which is all required by the Statute. Rule to shew Cause why the Plea should not be set aside, discharged. *Prime* for Plaintiff; *Draper* for Defendant.

Wood against *Grace*, an Attorney,

THIS was an Action for a Surgeon's Attendance, Medicines, &c. wherein Plaintiff's Attorney delivered a Declaration of nine Counts. Defendant obtained a Rule to shew Cause why the Declaration should not be reduced to three Counts. Upon shewing Cause, the Court ordered four Counts to be struck out, and the remaining five to stand, viz. *Indebitatus Assumpsit* and *Quantum meruit*, for Work and Labour; the like for Goods sold and delivered, and an *Indebitatus Assumpsit* for Money laid out for Defendant's Use, which will be sufficient to take in Plaintiff's whole Demand. *Kettley* for Defendant; *Agar* for Plaintiff.

Turner *against* Bean.

AFTER a *Certiorari* returned, whereby the Proceedings in an inferior Court of Record were removed into this Court, the Question was, Whether or no Plaintiff should declare *de novo*, it appearing by the Return that the Parties were at Issue in the Court below. Held that Plaintiff must declare *de novo*. *Prise* for Plaintiff; *Bootle* for Defendant.

Fitzwilliams *against* the Bishop of Hereford and the University of Cambridge, in Quare Impedit. Trin. 13 & 14 Geo. 2.

H Ayward, for Defendants, moved for an Impar lance, the Declaration having been delivered after the Efloign Day, *viz.* 4th June. Draper, for Plaintiff, produced a peremptory Rule to plead, after which there can be no Impar lance. The Rule to shew Cause was discharged; but the Court gave Defendants a Month's Time to plead,

Dowding, Administrator, *against* Baker and others.

THIS was an Action of Debt on Bond, Declaration delivered of Trinity Term last, with an Impar lance till Michaelmas Term; in that Term Defendants procured a Judge's Order for Time to plead till the 15th December, and then pleaded *Solvit ad diem* by one of the Defendants; in Hilary Term Plaintiff replied Nonpayment; and Defendants the same Term rejoined, and entered a Waiver of their Plea, and set out Letters Testimonial, dated 26th November, whereby it appeared, that Plaintiff was excommunicated 23d November, and so plead the Excommunication *puis darrien Continuance*; in Easter Term following, Plaintiff demurs, and Defendants joins in Demurrer. *Bootle* for Defendants alledged, that Plaintiff, in making up the Demurrer-Book, had continued the Impar lance from Trinity Term till the last Return of Michaelmas Term, which is 25th November, though the Plea was delivered generally of that Term, and the Impar lance ought to be carried no farther than *Tres Mich.* which is the constant Practice.

Practice. That by Plaintiff's continuing it beyond 23d *November*, an Absurdity was created; and Defendants would thereby lose the Benefit of their Defence, for that the Excommunication would then appear to be before, and not after the last Continuance. *Dra-per* for Plaintiff insisted, that it is Plaintiff's Right to enter Continuances by Impar lance, from the Declaration to Judgment or Issue; that Time to plead, and an Impar lance, are the same Thing; and as Defendants, in Truth, had Time to plead till 15th *December*, the Impar lance ought to be continued, according to the Fact; and of that Opinion was the Court, and ordered the Impar lance to be continued till *Tres Mich.* agreeable to the common Practice, and from thence till *Quinden' Martini*, agreeable to the Fact.

Harrison against Morris and others, in Trespass. Mich.

14 Geo. I.

A Rule to shew Cause why Defendant *Roads* should not have Leave to withdraw the General Issue, pleaded by Mistake, and join with the other Defendants in pleading a Special Justification, upon Payment of Costs, was made absolute, no Delay or Inconvenience being occasioned to Plaintiff thereby. *Boote* for Defendant *Roads*; *Prime* for Plaintiff.

Wells against Trehern, an Attorney.

P*ER Cur'*: Claim of Cognizance by the University of *Oxford* disallowed as coming too late, after Plea pleaded and Replication tendering on Issue. Rule to shew Cause why Claim of Cognizance should not be allowed was discharged.

Dun against Hutt, in Trover,

Dun against Hutt, in Assumpsit.

T*WO* Declarations by the By delivered 16th *October* next before this Term, (after Declaration in Chief delivered in *Easter* Term last) were held to be out of Time, and could not be regularly delivered after the Term in which the Writ was returnable.

turnable. An Agreement to receive the Declarations by the By was sworn upon Defendant's Attorney, but he denied it by Affidavit. Rule absolute to stay Proceedings. *Agar* for Defendant; *Kettelbey* for Plaintiff.

Lloyd, Assignee of the Sheriff, *against* Cullum, upon a Bail-Bond.

THE *Capias* in the original Action was returnable *Menf. Mich.* and the Bail-Bond assigned 17th *November*, and Process served thereupon, returnable *Quinden' Martini*, whereto Defendant appeared; and in last Vacation Plaintiff declared generally of *Michaelmas* Term, with an Imparance till this Term. Defendant demurred, and Plaintiff joined in Demurrer, and delivered the Demurrer-Book made up of this Term. Defendant obtained a Rule to shew Cause why the Entry of the Declaration should not be made generally of *Michaelmas* Term, as delivered. *Per Cur'*: This Rule shall be discharged, but every Thing ought to be entered according to Truth. Let the Declaration be amended by intitling it in fifteen Days of *St. Martin* in *Michaelmas* Term. Let the Demurrer be withdrawn, and Defendant have four Days to plead *de novo*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Cofens, Attorney *against* Etherington, Executor.
Trinity 14 & 15 Geo. 2.

A Rule was made to shew Cause why Defendant should not plead doubly, *viz.* a special *Plene Administavit*, and a Set-off, without an Affidavit; and no Cause being shewn, the Rule was made absolute. *Bootle* for Defendant,

Steele and others *against* Pindar, in Trover. Mich. 15
Geo. 2.

A Rule to shew Cause why Defendant should not plead doubly, *viz.* Not guilty, and a General Release from one of the Plaintiffs. The Court have been too nice in the Construction of the

the Act of Parliament for pleading doubly, which is general, and a remedial Law. These Pleas are not absolutely contradictory; the Release is general, and not particular, and cannot in this Case be given in Evidence under the Not guilty. *Draper* for Defendant; *Boote* for Plaintiffs.

Garnett, Attorney, *against* Harrison and Freeman,
Executors.

RULE to shew Cause why Defendants should not plead *Non Assumpsit*, and *Plene Administramer*, was made absolute, without an Affidavit from Defendants that they have fully administered. Before Lord Chief Justice *Eyre's* Time this Affidavit was not required, and it is not reasonable to expect it for the future. Pleading doubly is a Privilege Defendants are intitled to by Act of Parliament. The Court give Leave to plead *Non Assumpsit* and *Non Assumpsit infra sex Annas*, without an Affidavit; and that is a Case more within the Party's Knowledge than a *Plene Administramer*. If either of the Pleas are false, Costs are given by the Statute. *Gapper* for Defendants; *Draper* for Plaintiff.

Thornhill *against* Tunnard.

RULE to shew Cause why Defendant should not withdraw his Avowry, and avow Property in a Stranger, was made absolute. *Birch* and *Draper* for Defendant; *Boote* for Plaintiff.

Clixby *against* Dinas.

Defendant was sued by the Name of *Finis Dinas*; he pleaded in Abatement, that his Name was *Phineas*, and not *Finis*; but both the Plea and Affidavit to verify it were intitled, *In a Cause between Clixby, Plaintiff, and Finis Dinas, Defendant*. Rule to shew Cause why the Plea should not be set aside, was made absolute. *Boote* for Plaintiff; *Agar* for Defendant.

Lacy against Lock, in Trespass. Easter 15 Geo. 2.

RULE made absolute to plead doubly, (*viz.*) Not guilty, and 4l. 4s. paid Plaintiff in Satisfaction for all Trespasses to such a Time. *Draper* for Defendant; *Willes* for Plaintiff.

Fleming, Clerk, against Betts and Blake, in Trespass, for placing a Stile in Plaintiff's Fence, and cutting down Trees.

RULE discharged to shew Cause why Defendant should not plead doubly, Not guilty, and a Licence. *Draper* for Defendant; *Prime* for Plaintiff.

Goddard and Martin against Ballard and his Wife, Executors. Trinity 16 Geo. 2.

RULE made absolute to plead doubly, *viz.* *Ne unques Exec'*, and *Plene Administravit*; no Cause being shewn to the contrary.

Salmon against Aldrich. Hilary 16 Geo. 2.

RULE to shew Cause why Defendant should not withdraw his Plea of Tender, and plead the General Issue, and pay Money into Court upon the Common Rule, was discharged. The Court will permit Defendant to withdraw a Special Plea, and plead the General Issue; but after Plea pleaded, cannot give him Leave to bring Money into Court without Plaintiff's Consent. *Draper* for Plaintiff; *Agar* for Defendant.

Rutter *against* The Bishop of Hereford and the University of Cambridge, &c. in Quare Impedit. Easter 16 Geo. 2.

RULE to shew Cause why Defendants should not plead nine different Matters, (denying all the Facts in the Declaration) discharged. And the Court refused to grant a Commission to examine touching secret Trusts for Papists, according to the Statute, without the University's Consent to plead the Popish Act only. *Draper* for Plaintiff; *Hayward* for Defendant.

Hall *against* Lane, in Case on several Promises.

THE Court gave Defendant Leave to plead Bankruptcy to the first Count, and to pay Money into Court on the Common Rule, and plead the General Issue to the other Counts. *Wills* for Plaintiff; *Agar* for Defendant.

Brewer *against* Mathews, in Trespass.

DECLARATION was delivered so late last Term, that Defendant had not Time to move to plead doubly, but, to prevent Judgment, pleaded *Liberum Tenementum*. Plaintiff replied, and Defendant demurred. Plaintiff applied for Leave to amend the Replication, and Defendant to withdraw his Plea, and plead *Non cul* and *Liberum Tenementum*. A Rule was made to shew Cause upon Defendant's Motion and afterwards discharged, the Pleas being contradictory where the *Locus in quo* is ascertained by the Declaration (as in this Case) *Liberum Tenementum* is no Plea. It is only necessary where the Trespass is laid generally, to put Plaintiff upon making a new Assignment. No Affidavit is produced to verify that Defendant's Case requires both Pleas for his Defence. *Bootle pro* Plaintiff; *Wynne pro* Defendant.

Rolle, Esquire, *against* Lytton and others, in Trespass.

RULE to shew Cause why some of Defendants should not plead two Matters, *viz.* *Non cul*, and, that the Premises in Question are the Freehold of Sir *William Courtenay*, Baronet, discharged. The Place is ascertained by the Declaration; and Plaintiff may give the same Evidence on the General Issue as on both Pleas. *Belfield* for Plaintiff; *Draper* for Defendant.

Prinnel *against* Preston, in Trespass, for erecting a Shed in Plaintiff's Close called the Yard.

MOTION, without an Affidavit, to plead Not guilty, and a Licence. Where the Pleas are contradictory, Defendant should make appear by Affidavit that it is necessary for his Defence to insist upon both. If the Trespass be by Cattle, the Nature of the Case is sufficient, an Affidavit is not necessary, because the Matter may be without the Party's Knowledge. If by the Party himself, he must move upon Affidavit. The Court have never admitted Not guilty, and a Release of a particular Trespass; though they have admitted Not guilty, and a General Release, where an Affidavit was produced.

Burnand *against* Burnand. Trinity 16 & 17 Geo. 2.

RULE absolute to plead *Non cul*, and *Sen Assault Demesne*, (No Cause shewn) *Prime* for Defendant.

Bayley *against* Houldston.

THE Writ was returnable in *Easter* Term, and the Declaration, which was delivered the Day before the Essoign-Day of this Term, was sent *per Post* to *Shrewsbury* the same Day. Defendant's Agent could not have Instructions to plead a Tender within the first four Days of this Term, but moved as soon as he

he could. Rule to plead a Tender. *Skinner* for Defendant; *Prime* for Plaintiff.

Lawrence against Playford.

RULE obtained upon Affidavit to shew Cause why Defendant should not plead three Pleas, *Non cul*, *Son Assault Demefne*, and *Molliter manus imposuit*, made absolute to plead the first and last, rejecting the second. *Willes pro* Plaintiff; *Prime* for Defendant. The Case made by the Affidavit not making it necessary for Defendant's Defence to plead the second.

Banks against Bulcock, Executor. Mich. 17 Geo. 2.

RULE absolute, upon Affidavit of Service, to plead *Non est factum*, and *Ne unques Executor*. *Prime* for Defendant.

Bristow against Trappett, in Trespass and Assault.

RULE made absolute to plead doubly, *Nul cul*, and *Son Assault Demefne*. By Defendant's Affidavit the Assault appeared to be justifiable. He has a Right to plead the Special Plea, but is under a doubt whether without it the General Plea will be sufficient or not. He takes upon himself the Proof of a Collateral Matter by adding the Special Plea. If Plaintiff recovers, he will have full Costs, without a Certificate, though the Damages should be under 40 s. *Prime* for Defendant; *Willes* for Plaintiff.

Lannie against Fieldhouse, in Trespass, Assault and Maim. Hilary 17 Geo. 2.

NOT guilty, *Son Assault Demefne*, and Satisfaction for all Trespasses, not a particular Trespass, allowed to be pleaded; and Rule giving Defendant Leave to plead the same, made absolute. *Skinner* for Defendant; *Hayward* for Plaintiff.

Bingham *against* Davis.

RULE was made absolute, giving Defendant Leave to plead a Tender of Money of last Term, notwithstanding the General Imparance. Defendant's Agent, though he appeared in Time, had no Notice of the Declaration till the first Day of this Term; and on the 26th *January* he obtained a Judge's Summons. *Hayward* for Defendant; *Birch* for Plaintiff.

Bullythorpe *against* Turner, in Replevin. Easter 17 Geo. 2.

THE Court held, That the particular Place of taking Goods, &c. ought to be inserted in every Declaration in Replevin; and that *Cepit in alio Loco* is to be considered as a Plea in Bar, and not in Abatement. No Affidavit is requisite to be filed therewith, nor is it necessary to be pleaded within four Days after the Declaration delivered. *Resolutio Curie*.

The King *against* The Archbishop of York, in Quare Impedit. Easter 18 Geo. 2.

RULE to shew Cause why Defendant should not have Leave to plead doubly, discharged. The Statute 4 *Anne*, chap. 16. does not extend to Suits where the King is a Party, unless for Debt immediately owing, or Revenue. *Vide* 24th Sect. of the Statute.

Benson *against* Hemming. Trinity 18 & 19 Geo. 2.

PLAINTIFF's original Demand was 15*l.* 3*s.* 9*d.* Defendant gave Notice to set off, but took no Advantage under it; proving on the Trial Payments in Part, which reduced the Debt to 1*l.* 13*s.* 9*d.* and that Sum the Jury gave Plaintiff in Damages. Defendant obtained a Rule to shew Cause why he should not have Leave to enter a Suggestion on the Roll (pursuant

to the Statute 1 *W. & M.* setting up Courts of Conscience in *Bristol* and *Gloucester* :) That the Parties are both Inhabitants of *Gloucester*, and the Debt recovered under 40 *s.* Plaintiff's Counsel quoted a Case in *B. R. Pitts* against *Carpenter*, *Trinity* 16 & 17 *Geo.* 2. where a Cross Demand of 3 *l.* 2 *s.* had been proved by Way of Set-off, and thereby Plaintiff's Original Debt of 4 *l.* 15 *s.* was reduced to 1 *l.* 13 *s.* 3 *d.* After the Benefit of said Set-off, the Court denied Leave to Defendant to enter Suggestion. This Court was of the same Opinion as the Court of King's Bench. The Demand in the Case quoted was reduced by Defendant's Act; it was not known to Plaintiff, at the Time of bringing his Action, whether Defendant would take Advantage of a Set-off or not. The Inferior Court has no Jurisdiction for a Debt above 40 *s.* But this Case differs from that quoted here; no Set-off is used, but Payment proved under the *Non Assumpsit*. The original Debt, which was the Cause of Action, appears to be no more than 1 *l.* 13 *s.* 9 *d.* Defendant's submitting to the Jurisdiction of this Court doth not take away his Remedy after Verdict, he now comes *primo instante*. The Suggestion may be traversed as to Inhabitaney. Rule for Leave to enter Suggestion absolute. The *London* Court of Conscience, Act 3 *Jac.* 1. *chap.* 15. is a good Statute; and though this Act relating to *Bristol* and *Gloucester* be inaccurately penned after a good Precedent, yet the Court is bound by it. *Skinner* for Plaintiff; *Willes* and *Draper* for Defendant.

Thompson against Atkinson, in Covenant broken.
Mich. 19 *Geo.* 2.

JUNE 26th 1745 Defendant obtained a Judge's Order for a Fortnight's Time to plead, pleading an issuable Plea, and taking short Notice of Trial. Defendant pleaded a general Performance of Covenants (not signed by Counsel), which was held to be no issuable Plea, and set aside. Costs to attend the Event. *Prime* and *Wynne* for Plaintiff; *Skinner* for Defendant.

Smith against Philips, one, &c. Hilary 19 *Geo.* 2.

BILL intituled generally of *Michaelmas* Term; Declaration with a Memorandum of the 23d *October*; after which Day, and before 25th *November*, the true Day of filing the Bill, the Defendant

Defendant had tendered Money to Plaintiff. *Willet*, for Defendant, moved, after the first four Days of this Term, that the 25th *November* might be inserted in the Memorandum instead of 23d *October*, in order that Defendant might plead a Tender. No Rule. Defendant is too late to plead a Tender, after a general Imparllance. He should have applied within the first four Days of this Term.

Tayler against Wittall, in Trespass and Assault. Trin.
19 & 20 Geo. 2.

RULE made for Leave to plead three Pleas, (*viz.*) *Non Cul*, *Son Assault Demesne*, and *Molliter Manus imposuit*. *Belfield* for Defendant; *Wynne* for Plaintiff.

Harman against Dunn, for Words. Mich. 20 Geo. 2.

RULE made absolute for Defendant to plead Not guilty, and a Justification. *Wynne* for Defendant; *Skinner* for Plaintiff.

Haddock against Howard. Hilary 20 Geo. 2.

DEFENDANT, whilst a Feme sole, was arrested in the Palace Court, and a Day or two after the Arrest married, and then removed the Pleint by *Ha. cor.* into this Court, and pleaded her Coverture in Abatement. Rule to shew Cause made absolute to set aside the Plea, upon hearing Counsel on both Sides.

Crabb, Clerk, against Button, Clerk, Executor.

RULE made absolute to plead two Pleas, *viz.* *Ne unques Executor*, and *Plene Administravit*. *Draper*: Defendant is sued as an Executor *de son Tort*, and it is dangerous for him to rely on the first Plea; he knows not whether the Act he has done makes him Executor, or not. If he has done Wrong, he

has made Satisfaction. *Plene Administravit* is within his own Knowledge. *Draper* for Defendant; *Wynne* for Plaintiff.

Harison against Speight, Transitory Action of Trespafs for taking and carrying away Brackens. Easter 20 Geo. 2.

LEAVE given Defendant to plead two Pleas, *viz.* Not guilty, and a Justification; prescribing as Owner and Occupier of Defendant's Messuage, &c. and because Plaintiff wrongfully cut down the Brackens, Defendant took them as belonging to him. This is not stronger than Not guilty, and *Liberum Tenementum*. *Bootle* for Defendant; *Skinner* for Plaintiff.

Smith, one, &c. against Lodge, for Words. Trinity 21 Geo. 2.

RULE made absolute for Defendant to plead two Pleas, (*viz.*) Not guilty, and a Justification as to the Truth of the Words, which Words imported, That Plaintiff was perjured in an Affidavit he had made. If the Words are true, Defendant may be trapped, by imagining that he may give the Truth of the Words in Evidence on the General Issue. There are no other Pleas in Actions for Words but these two, and if the Rule be denied, the Court must determine Actions for Words to be out of the Statute for pleading doubly. *Bootle* for Defendant; *Prime* for Plaintiff.

Penvold against Thomlinson, one, &c. By Bill.

DEDEFENDANT moved to stay Proceedings, the Declaration having been delivered without the usual Memorandum. The Court gave Plaintiff Leave to amend, by inserting the Memorandum, on Payment of Costs. *Bootle* for Defendant; *Prime* for Plaintiff.

Browne *against* Hagan. Easter 21 Geo. 2.

RULE to shew Cause why Defendant should not have Leave to plead a Tender of Money of last Term, notwithstanding the General Imparllance, made absolute on Payment of Costs, though the Application was not made within the first four Days of this Term, according to the General Practice; it appearing that the Declaration was not delivered till the Day before the Essoign Day of this Term; and that Defendant's Agent, who was obliged to write into *Suffolk*, had applied almost as soon as he possibly could. *Belfield* for Plaintiff; *Bootle* for Defendant.

Jones *against* Davis and his Wife. Same Term.

DE F E N D A N T had pleaded four Pleas, as by Leave of the Court, though he had obtained no Rule for that Purpose, but a Judge's Order. Plaintiff moved, that either three of the four Pleas, or the Words [*By Leave of the Court*] might be struck out. The Statute giving the Power of Leave to plead several Matters to the Court only, the Pleas were held to be improperly pleaded; but the Court gave Defendant Leave to plead the same four Pleas *de novo* of this Term, on Payment of Costs. *Draper* for Defendants; *Belfield* for Plaintiff.

Hill *against* Williams, Assignee, &c.

DE F E N D A N T had pleaded a Tender made 13 *January*; Plaintiff replied an Original Teste 2d *January*. On Defendant's Application, the Court of Chancery had ordered the Teste of the Special Original sued out by Plaintiff to be altered from 2d *January* (the common Teste Day of an Original returnable *Oct. Hil.*) to 16th *January*, the true Day on which the Instructions for this Original were left with the Cursitor. As the Original, thus altered, would not answer Plaintiff's Purpose, the Tender having been made before 16th *January*, he took the Money brought in with the Plea, out of Court, entered an Acquittal, and gave Defendant Notice that he would proceed no farther, refusing to pay Defendant's Costs; whereupon, on Defendant's Motion, a

Rule was made for Plaintiff to shew Cause why the Entry of Acquittal should not be set aside, with Costs; or why Plaintiff should not pay Defendant the Costs he had been put to on Account of this Action. On shewing Cause, the Court held, that after Plaintiff had replied, he ought not to have entered an Acquittal, without Leave of the Court. And with Regard to the Replication, it (as the Original was altered) ought not to stand; and that though Plaintiff may take out of Court the Money tendered, and make an Entry of Acceptance before Replication, yet still he must pay Costs. The Replication to the Tender is a Refusal to accept the Money. Rule to set aside the Entry of Acquittal, and that Plaintiff be at Liberty to withdraw his Replication, on Payment of Costs of that Replication, and reply *de novo*. *Draper* for Defendant; *Poole* for Plaintiff.

Lamb and his Wife against Goodenough, Clerk, Executor. Easter 21 Geo. 2.

A. R. as Defendant's Attorney, had, eleven Years ago, without Defendant's Order or Privity, fraudulently pleaded two Judgments, one on Bond to himself, the other on Bond to a Person to whom he was Executor, after he knew them satisfied, having himself received the Money. On Defendant's Motion a Rule was made for Plaintiff to shew Cause why these Judgments should not be struck out of the Plea, on Payment of Costs, and *A. R.* was ordered to answer the Matters in the Affidavits. On hearing all Parties, Rule was made by Consent, That *A. R.* should pay Plaintiff's Costs *ab initio*; and thereupon Plaintiff should discontinue; and that *A. R.* should pay Costs of the Application to Plaintiff and Defendant, and that no Action be brought by Defendant against *A. R.* for any thing relating to this Cause. *Prime* and *Belfield* for Plaintiff; *Skinner* for *A. R.* *Poole* for Defendant.

Alderfon *against* Dodding. Mich. 22 Geo. 2.

RULE to shew Cause why Defendant should not plead Not guilty, and a Tender, discharged. As the Pleas are contradictory, the former denies, the latter admits. *Prime* for Plaintiff; *Bootle* for Defendant.

Roberts, Administrator, *against* Hughes. Easter 22 Geo. 2.

DEFENDANT demurred to an insufficient Declaration of *Hilary* last; Plaintiff thereupon, by Virtue of a Judge's Order, amended his Declaration, on Payment of Costs; and this Term gave a new Rule to plead. Defendant moved for Leave to plead a Tender as of last Term, or that Plaintiff might make his Declaration of this Term. Rule to shew Cause made absolute. *Skinner* for Defendant; *Draper* for Plaintiff.

Merefield *against* Hulls. Trinity 24 Geo. 2.

RULE made absolute to plead *Non est factum*, and *Duresse*. These Pleas are not contradictory; one is a General, the other a Special *Non est factum*. *Eyre* for Defendant; *Agar* for Plaintiff.

Lacy and Garrick *against* Barry, in Covenant. Mich. 24 Geo. 2.

BREACH assigned for acting at *Covent-Garden* Theatre, contrary to Articles. Rule absolute for Leave to plead doubly, *viz.* First, That Plaintiffs do not act under Letters Patent, or Licence from Lord Chamberlain; and secondly, That Defendant is not qualified to act under such Letters Patent or Licence. Unless *prima facie* the Pleas appear to be frivolous, the Court, on Motion, will not consider whether they are material or not. Plaintiffs may demur. *Draper* for Defendant; *Willes* and *Poole* for Plaintiffs.

Herbert *against* Flower and others, in Trover. Trin.
24 & 25 Geo. 2.

RULE to shew Cause why Defendant should not plead doubly, Not guilty, and that Plaintiff became a Bankrupt, and his Effects were assigned, discharged. These Pleas are not both necessary for the Defence, they amount to an Inversion of the Action, and pleading Property in Defendant. The latter may be given in Evidence on the former; on *Non Assumpsit* every Thing may be given in Evidence but a general Release. *Boote* for Defendant; *Prime* for Plaintiff.

Whaley *against* Harrison and others. Mich. 25
Geo. 2.

THE Declaration was delivered last Vacation, with an Imparlance till the first Return of this Term; Defendants, within the first four Days of this Term, moved, and had a Rule to shew Cause why they should not plead three Pleas, (*viz.*) *Non Assumpsit*, a Set-off, and a Tender as of last Term. Plaintiff's Counsel objected to the last Plea, That Defendant had taken out a Judge's Summons for Time to plead, which (though no Order was made thereon) shews that they have not been *touts Temps priſt*. But *per Cur'*: The Motion was made in Time. A Tender is no dilatory Plea. The Rule made absolute. *Agar* for Defendants; *Prime* for Plaintiff.

Bownas *against* Wilcock, Widow.

TRESPASS brought by Tenant against Landlady (who had distrained for Rent) for breaking and entering Plaintiff's Close and Shop, and taking and carrying away his Farrier's Tools and Goods. The Declaration contained five Counts (fol. 73.) Motion by Defendant to reduce the five Counts into one. Rule to shew Cause. On Plaintiff's Part an Affidavit was produced, proving six different distinct Trespasses; but the Court did not consider these as similar to Counts in *Assumpsit*. The

Trespaffes on different Days may be laid in one Count for breaking and entering the House and Shop, on such a Day, &c. with a *Continuando*; and another Count may be added for taking away the Goods, &c. without laying the Taking to be out of the House and Shop. The Declaration ordered to be reduced into two Counts. *Poole* for Defendant; *Prime* and *Willes* for Plaintiff.

Jackfon *against* Warwick and others, in Replevin.
Trinity 25 & 26 Geo. 2.

RULE made absolute, giving Plaintiff Leave to withdraw his Plea in Bar to Defendant's Avowry, and to plead doubly, *viz.* the same Plea, with another Plea added, on Payment of Costs. In the Course of this Motion it was said, that the frequent Applications made to the Court to plead *Non Assumpsit*, and *Non Assumpsit infra sex Annos*, were unnecessary; because the latter Plea singly would answer all Purposes, without the former; but this is a Mistake. Under the former Plea, Coverture, a Release, a Set-off, may be given in Evidence, which under the latter cannot be done. *Poole* for Plaintiff; *Willes* for Defendants.

Pay *against* Dearsley. Easter 26 Geo. 2.

THE Declaration (fol. 17.) in a Country Cause, was delivered 8th *February* last, between eight and nine in the Evening, to Defendant's Agent, who had not Time to send a Copy by that Post to his Client. 16th *February* Defendant pleaded a Tender of Money, which Plaintiff's Agent insisting to be irregular, as not pleaded in Time, Summons was taken out; whereupon Lord Chief Justice ordered Proceedings to be stayed till second Day of this Term; when *Poole* for Defendant moved to plead a Tender, and a Rule was made to shew Cause. Now *Willes* for Plaintiff came to shew Cause, and insisted, That where a Declaration is delivered four Days before the End of a Term, on Process returnable the first or second Return of that Term, (in which Case Defendant is not intitled to an Imparlance) if Defendant would plead a Tender, he must do it within four Days after Declaration delivered, the same Time he has to plead in Abatement. The Court did not establish this

this Doctrine; but held, that whatever the strict Rules of Practice may be, yet they may and ought to be dispensed with on particular Circumstances. The Delivery of this Declaration at the last Minute looks like a Trick, to deprive Defendant of the Benefit of his Plea, which is not considered as dilatory; it is issuable, and the Money pleaded to be tendered is brought into Court with it. Rule absolute, giving Defendant Leave to plead a Tender.

Pitfield against Morey. Trinity 26 & 27 Geo. 2.

RULE absolute to plead a Tender of Money to the first Count, and *Non Assumpsit* to the Residue, as of the last Term; the Declaration not being delivered till the Day before the Essoign Day of this Term, Defendant's Agent could not get Instructions from the Country in Time, though he might have had an Answer, and applied a Day or two sooner. A Tender is a fair Plea. *Wynne* for Defendant; *Drapier* for Plaintiff.

Browne against James, in Replevin.

RULE made, giving Defendant Leave to withdraw his former Avowries, &c. and plead the same again, with two other Pleas added, on Payment of Costs, (after Issues joined twelve Months ago) Plaintiff to be at Liberty to plead in Bar *de novo*, and to proceed to Trial next Assizes. *Poole* for Defendant; *Wilson* for Plaintiff.

Halton against Holme, one, &c.

RULE to shew Cause why Defendant should not have Leave to withdraw his Plea, pay 50 *l.* into Court, and plead the General Issue, made absolute; Defendant doing so within a Week, and taking short Notice of Trial for next Assizes. *Poole* for Defendant; *Willes* for Plaintiff.

Bell *against* Crosthwaite, in Trespass. Mich. 27
Geo. 2.

Interlocutory Judgment regularly signed for Want of a Plea. Rule to shew Cause why should not be set aside on Payment of Costs, and pleading an issuable Plea. On shewing Cause, *Willes* for Plaintiff urged, that the Action was laid in *Cumberland*, where the Assizes are held but once a Year, and Plaintiff had been delayed of a Trial; and that if the Court did set aside a regular Judgment, they would confine Defendant to plead the General Issue. But it appearing that the Dispute was Matter of Title, and that the Plea, through Accident, was not settled in Time, the Rule was made absolute. *Poole* for Defendant.

Mich. 28 Geo. 2.

MOTION in Action on the Case to plead *Non assumpsit* and Infancy denied, because the latter Plea is useless; Infancy may be given in Evidence on the General Issue: In Debt on Bond or other Deed *Non est factum* and Infancy have been allowed to be pleaded, because though the Bond, &c. may be Defendant's Deed; yet if he was under Age at the Time of its Execution he is not bound by it.

Fox Executor *against* Meen, in Debt on Bond.

MOTION by *Draپر* for Defendant for Leave to plead doubly (*viz.*) *Non est factum*, and *Solvit post diem*, denied as never yet granted.

Mathews *against* Statham Executor. Hilary 28
Geo. 2.

RULE absolute for Leave to plead three Pleas (*viz.*) *Non assumpsit* by the Testator, a General *plene administravit*, and a Special *plene administravit*; it may be dangerous and inconvenient to

to rely on the third Plea without the Aid of the second ; No Affidavit to verify the *Plene administravit* has been required of late. *Pagle* for Defendant ; *Wynne* for Plaintiff.

Milner against Wilson, in Trespass Assault and Battery. Trin. 28 Geo. 2.

RULE made absolute to plead Not guilty, and a Licence ; a Licence to beat a Man is very extraordinary, but Leave to plead these Pleas has been granted in other Cases. *Poole* for Defendant ; *Willes* for Plaintiff.

Whitby against Chapman, in Replevin. Mich. 29 Geo. 2.

RULE to shew Cause why Defendant should not reply several Matters to a Plea in Bar to an Avowry discharged. No Instance can be shewn of several Matters replied since *Statute 4 Q. Ann.* several Matters may with Leave of the Court be pleaded to a Declaration in a common Case ; and in Trespass to a new Assignment, that being in the Nature of a New Declaration ; and also in Replevin in Bar to an Avowry or Cognizance, setting out the Right to seize or distrain, which is to be controverted ; but though the Words of the Statute are to plead as many Matters, &c. and Replications, Rejoinders, &c. are properly Pleadings ; yet the Courts of *Westminster* have never carried their Leave further than as before-mentioned. *Draper* for Plaintiff ; he quoted *Poltro* against *Self* in *B. R.* Hil. 17 Geo. 2. where the Court refused Leave to reply doubly to a Plea of Tender, *Prime* for Defendant.

Stibbard against Glover in Replevin. Easter 29 Geo. 2.

RULE absolute to plead three several Matters, viz. First, *Non cepit* ; Secondly, That the Cattle were the Property of another Person, not of the Plaintiff ; and Thirdly, *Liberum Tenementum*. *Prime* for Defendant ; *Martyn* for Plaintiff.

Newman *against* Leech, Executor.

RULE made absolute, giving Defendant Leave to plead doubly, viz. *Ne unques* Executor, and *Plene administravit*, (no Cause shewn by Plaintiff to the contrary.) *Pool* for Defendant.

Simpson *against* Neale, Esq. Trin. 30 & 31 Geo. 2.

TO a Plea in Bar of a former Judgment recovered for the same Debt now sued for, which Plea was signed by a Serjeant at Law, Plaintiff delivered a Replication of *Nul tiel Record* not signed by a Serjeant. Whenever the Plea is signed by a Serjeant, the Replication must be likewise signed. Rule absolute to set aside the Replication. In this Court all Pleas must be signed by a Serjeant, except *Non Assumpsit*, *Non Cul. Comperuit ad Diem*, *Son assault demesne*, *Plene administravit*, *Riens per Discent*, *Nul tiel Record*, *Per Minas*, *Solvit ad Diem*, *Ne unques* Executor, *Ne unques* Administrator, *Infra Etatem*, *Non est Factum*, *Nil debet*, Payment of Rent in Covenant, &c. *Wilson* for Defendant; *Prime* for Plaintiff.

Lookup, Esq; *against* Frederick, Bart. Hil. 31 Geo. 2.

RULE to shew Cause why Defendant should not have Leave to plead several Matters discharged, the Action being brought on a *Penal Statute* 9 *Q. Ann.* (for Money won at Play) is not within the *Statute* 4 *Q. Ann.* for the Amendment of the Law. *Wilson* for Plaintiff; *Davy* for Defendant.

Thomas *against* Eamonson in Replevin. Easter 31 Geo. 2.

RULE absolute to plead *Non cepit*, and to avow the taking. Like-not Guilty, and a Justification in Trespass. *Davy* for Defendant; *Hayward* for Plaintiff.

Spooner *against* Hall. Trinity 31 Geo. 2.

SPECIAL Action on the Case founded on Agreement to do a Thing or pay three Guineas. Rule absolute to plead *Non assumpsit*, a Tender, and a Set-off. If any of the Pleas improper, Plaintiff may demur. *Prime* for Defendant; *Hewitt* for Plaintiff.

Gerring *against* Manning in Trespass. Trinity 32 & 33 Geo. 2.

RULE absolute giving Defendant Leave to plead not Guilty, and a Tender of Amends. This very different from *Non assumpsit*, (in Case on Promise) and a Tender of Money. *Vide ante*, Alderton *against* Dodding, Mich. 22 Geo. 2. is misprinted. The Action there was Case on Promise, the Pleas denied to be pleaded were *Non assumpsit*, and a Tender of Money. *Hewitt* for Defendant; *Nares* for Plaintiff.

Prisoners.

Wagstaffe *against* Darby. Mich. 6 Geo. 2.

A Motion was made to discharge a Prisoner in the *Fleet*, detained by a *Capias utlagat*, (Plaintiff being dead.) Upon Affidavit of the Death of Plaintiff, and searching the proper Offices at *Dofors Commons*, and finding no Administration granted, or Will proved, a Rule was made to shew Cause, which was afterwards made absolute.

Poulter against Greenwood.

UPON a Point reserved by Lord Chief Justice at *Nisi prius*, in an Action brought against the Sheriff of *Lancashire* for an Escape, it was held *per Cur'*, that an Assignment of Prisoners by an Under-Sheriff to the succeeding High-Sheriff (though not by Indenture) is a good Assignment.

Beech against Paxton, Widow. Easter 6 Geo. 2.

Defendant, who had petitioned to be discharged pursuant to the Lords Act, was ordered to remain in the Custody of the Warden of the *Fleet Prison* upon Plaintiff's giving a Note to pay her 2s. 4d. *per Week* every *Monday*. Plaintiff once made Default of Payment on the Day, and Defendant applied to the Court to be discharged; but it appearing that the Money was tendered to Defendant the Day following, Defendant was remanded to Prison.

Wheatley against Parker. Trinity 6 & 7 Geo. 2.

Defendant, a *Quaker*, brought up to Court to be discharged upon the Lords Act; but refusing to take the Oath by the Act required, was remanded to Prison. *Note*; This altered since by Act of Parliament.

Baker against Holmer.

Defendant petitioned upon the Lords Act, and it appeared that he was charged in Execution for 103*l.* 10*s.* Debt, besides Costs. It was alledged by the Petition that 42*l.* 5*s.* Part of the Debt, was paid. Court denied to make any Order.

Greenfal *against* Cooper.

A Prisoner, charged in Execution in the *Marshal's Court*, petitioned that Court to be discharged upon the Lords Act, and was detained there upon Plaintiff's undertaking to pay his 2s. 4d. per Week. Defendant afterwards removed himself by *Habeas Corpus* to the *Fleet*, and moved to be discharged for Non-payment of the 2s. 4d. per Week. Court made a Rule to shew Cause; but afterwards, upon hearing Counsel on both Sides, the Rule was discharged, Court being of Opinion that Defendant had lost the Benefit of the Act by removing himself, and could only petition and be discharged by that Court out of which the Execution issued. *Darnall* for Defendant; *Baynes* for Plaintiff.

Palmby *against* Masters.

Defendant, a Bankrupt, was rendered in Discharge of his Bail after Judgment, and now moved to be discharged pursuant to the Bankrupt Act. Plaintiff objected that the Words of the Act extend only to Persons charged in Execution, or by Virtue of Judgments: The Judgment appeared to be for a Debt due before the Bankruptcy, and was entered in *Hilary Term* last; the Render was in the Beginning of *April*, and the Bankrupt's Certificate was confirmed the 18th of *April*. *Chapple* for Defendant urged, that the Words of the Act extend to Bankrupts detained in Custody for Debts due before they became Bankrupts, which Debts are discharged by the Act, let them be detained how they will, in Execution or otherwise, they are to be discharged. Court, after taking Time to consider, ordered Defendant to be discharged.

Peachey *against* Bowes, Spinster.

Defendant being a Prisoner in the *Fleet* at Plaintiff's Suit, brought a Writ of Error, and thereupon Judgment was reversed, and a *Superfedeas* issued to discharge her out of Custody; but before she could get the *Superfedeas* allowed, Plaintiff charged her with a new Declaration;

Declaration; whereupon she moved to be discharged; And the Court, upon hearing Counsel on both Sides, were of Opinion, that Defendant being detained a Prisoner at Plaintiff's Suit only, and not at any other Person's, could not be regularly charged with the second Declaration after the Reversal of the first Judgment, whereon Defendant had been wrongfully detained, and therefore ordered Defendant to be discharged, notwithstanding the second Declaration. *Comyns* for Defendant; *Eyre* for Plaintiff.

Shaw, Bart. *against* Gimbert. Mich. 7 Geo. 2.

Defendant, an insolvent Prisoner, moved to be discharged for Plaintiff's not paying the Weekly Allowance of 2s. 4d. according to the Act of Parliament. Plaintiff ought to have paid the Money on *Tuesday*, and neglected it; but on *Friday* following his Agent tendered the Money to Defendant, who refused to accept it. *Per Cur'*: No wilful Default appears in the Plaintiff; let Defendant be remanded.

Robins *against* Wigley.

THE Defendant being a Prisoner in the *Fleet* was brought to the Bar by *Habeas Corpus*, in order to be charged in Execution at Plaintiff's Suit. *Baynes* for Defendant objected, that Plaintiff not having charged Defendant in Execution within two Terms after Judgment obtained, was now too late, Defendant being intitled to a *Superfedeas*; and so the Court held, and the Prisoner was remanded. (*Aliter postea.*) Plaintiff may proceed at his Peril.

Baker *against* Holmer.

Defendant, who was charged in Execution at the Plaintiff's Suit for 103*l.* 10*s.* Debt, besides Costs, made an Affidavit that 42*l.* 5*s.* Part of the Debt, was paid; and thereupon *Hawkins* moved that Plaintiff might endorse upon the *Habeas Corpus* by Virtue whereof the Defendant was charged in Execution, the Sum remaining due, in order that upon Plaintiff's own shewing the Sum might appear to be under 100*l.* whereby Defendant would be enabled to

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take the Benefit of the Lords A&C. The Court made a Rule to shew Cause, which was afterwards made absolute upon hearing *Belfield* for Plaintiff.

Note; Plaintiff afterwards indorsed 103*l.* 10*s.* upon the *Habeas Corpus* as his Debt; and the Court, upon a subsequent Application, refused to enter farther into the Consideration of what was really due.

Toms *against* Hammond.

DEfendant moved to be discharged upon the A&C of Parliament as a Domestick or menial Servant (which were the Words of his Affidavit) of Baron *Hopman*, Envoy from the Duke of *Mecklenbourg*, and obtained a Rule *Nisi*. Plaintiff shewed for Cause, that Defendant had an Annuity of 200*l.* a Year, and that he was a Justice of Peace for *Middlesex*; so that it was not likely he could act as the Envoy's Domestick Servant, and insisted that the Words of the Envoy's Certificate produced by Defendant were *Mennial Servant* only, which is not within the A&C, the Words of the A&C being *Domestick Servant*. *Per Cur'*: The Word *Mennial* is not explained by our Law, *Domestick Servant* are the Words of the A&C, and it doth not appear that Defendant was such. A menial Servant may be employed out of the House or Household Affairs, a Domestick in or about the House only. A Person hired as a Clerk is no Domestick Servant. Defendant did not appear to have received any Wages. Let the Rule be discharged.

Luker *against* Wallis, Widow. Easter 7 Geo. 2.

THE Defendant being an insolvent Debtor was brought into Court a second Time, and Plaintiff being dead, his Executor appeared, and prayed further Time to inquire into the Truth of Defendant's Discovery of her Effects; but the Court refused to enlarge the Time, which is limited by A&C of Parliament, and discharged the Prisoner.

Warrington *against* Elliott.

Plaintiff's Attorney appeared and offered to sign a Note for 2s. 4d. *per* Week, to be allowed Defendant in order to continue him in Prison in Execution at the Plaintiff's Suit; but the Court discharged the Defendant for want of Plaintiff's signing such Note, the Signing of the Attorney not being sufficient.

Castle, and Wife, *against* Whitaker. Trinity 7 & 8
Geo. 2.

GIRDLER moved for the Defendant to shew Cause why it should not be referred to the Prothonotary, to examine what was due for the Plaintiff's Debt, in order that Defendant might have the Benefit of the Lords Act, upon an Affidavit that 21*l.* only remained due, though Defendant was charged in Execution for upwards of 100*l.* Court refused that Rule, but made a Rule to shew Cause why, upon Payment of the 21*l.* and Costs to be taxed, Defendant should not be discharged.

Swain *against* Girdler, Serjeant at Law.

Defendant was sued by Bill; to which he demurred, insisting that he ought to be sued by Original, and upon arguing the Demurrer, a Case was quoted, *Baker against Swindale* in this Court, Mich. 10 G. Roll. 360. that was an Action brought against a Prothonotary's Clerk by Original. He pleaded that he ought to be sued by Bill; to which Plaintiff demurred, and the Court gave Judgment that the Defendant should answer over. *Per Cur'*: This Case is in Point; Serjeants, Prothonotaries Clerks, and all others not obliged to Attendance in Court, are upon the same Foot. Judgment *quod Billa cassetur*. *Eyre* for Plaintiff; *Hawkins* for Defendant.

Cooper, and nine others, *against* Levi. Mich. 8
Geo. 2.

DEFENDANT was committed to the *Fleet* by the Commissioners of Bankrupt for not answering Interrogatories in the long Vacation, when no Judge was in Town, and was then charged with Declarations at the Suit of several Plaintiffs, without Leave obtained from any of the Judges of the Court. Defendant applied to set aside the Proceedings on the Day before the Writs of Inquiry were to be executed, and not before, and obtained a Rule to shew Cause, which was afterwards discharged on hearing Counsel on both Sides. The Court did not determine upon the Regularity of the Charge; but held that Defendant came too late to move after Judgment. *Eyre, Baynes, and Umlin* for Plaintiffs; *Chapple and Skinner* for Defendant.

Jenner against Swan. Hilary 8 Geo. 2.

PER Cur': All Objections, as to the Insufficiency of a Prisoner's Schedule of his Effects in Point of Form, are to be made upon the first Attendance: The second Time the Prisoner is brought up, the Plaintiff must be prepared to falsify the Account given by Defendant of his Effects, if he can; he will then be too late to object to the Schedule in Point of Form.

Sir William Strickland *against* Hodgson.

CHAPPLE moved to stay Proceedings upon a Declaration delivered against Defendant, a Prisoner in the County Gaol for *Northumberland*, the Declaration not having been entered in the Prothonotary's Office before it was delivered. The Motion was opposed by Serjeant *Eyre*; and upon looking into the Rule of Court made soon after the Statute of 4 & 5 W. 3. for establishing the Practice touching the Delivery of Declarations to Prisoners in Country Gaols, the Court were of Opinion that it is sufficient to enter the Declaration any Time before giving a Rule to plead, and therefore no Rule was made.

Tidmas

Tidmas *against* Procter. Trin. 8 & 9 Geo. 2.

Defendant, an Insolvent Debtor, petitioned to be discharged for Non-payment of the Weekly Allowance of 2s. 4d. but it appearing that Plaintiff was dead before any Default made in Payment, the Court made no Rule. This is a Case unprovided for by Act of Parliament.

Tidmas *against* Procter. Mich. 9 Geo. 2.

COURT made a Rule for Plaintiff's Executor to shew Cause why Defendant, an Insolvent Debtor, should not be discharged for Non-payment of the Weekly Allowance of 2s. 4d. and upon an Affidavit of Service, no Cause being shewn, Defendant was ordered to be discharged, the Words of the Act of Parliament being general.

Featherstonehaugh, and Wife Administratrix of Brown,
against Atkinson.

Defendant had been a Prisoner in *Wood-street* Compter in 1732. upon mesne Process at the Suit of *Brown*, Plaintiff's Intestate, and being at that Time a Serjeant at Mace, the Keeper of the Compter suffered him to have the Liberty of the Gate (as it is called) that is, to have his Liberty upon Promise to return into Custody whenever called upon by the Keeper; the said Action having never been discharged upon the Books of the Compter, and *Brown* in his Life-time having obtained Judgment, Plaintiffs revived the same by *Scire Facias*, and having obtained an Award of Execution, charged Defendant (still a Prisoner on the Books) with a *Capias ad satisfaciendum*, as a Prisoner in Custody of the Sheriffs of *London*; whereupon the Keeper of the Compter endeavoured to persuade Defendant to return into Custody; which he refusing, the Keeper on *Sunday November 9.* retook Defendant at *George's Coffee-house, Temple-Bar*, without any Warrant, and Defendant moved against the Keeper to be discharged, insisting that as the Escape was voluntary, the Keeper could not retake him; and also insisting, that the Debt was paid to *Brown* in his Life-time. The Keeper, on shewing Cause, could not

controvert the first Thing insisted on, *viz.* that the Escape was voluntary, and as to Payment of the Debt, that was out of his Knowledge; *Brown's* Action never was discharged from the Books, and Plaintiffs were not Parties to this Motion, But there having been a former Motion this Term by Defendant to be discharged, the Debt being paid; Plaintiffs had answered that Fact, and shewn sufficient Cause to keep him in Custody, The Escape on all Hands being admitted to be voluntary, Mr. Justice *Denton* and Mr. Justice *Fortescue* were of Opinion, that the Keeper could not retake Defendant, and that he ought to discharge him. Had the Escape been real, the Keeper might have retaken Defendant upon a *Sunday*, and is not restrained by the Statute 29 *Car.* 2. Mr. Justice *Reeve* was of the same Opinion in Point of Law, but thought it too much for the Court to relieve Defendant, who appeared to have acted (at least very dishonourably with regard to the Keeper) in this summary Way upon Motion, and that Defendant should be put to his Action or an *Audita Querela*. Defendant was ordered to be discharged. *Skinner*, *Umlin*, and *Wright* for the Keeper; *Glyde*, *Chapple*, and *Eyre* for Defendant.

Roberts against Hammond. Hil. 9 Geo. 2.

DEFENDANT, an Insolvent Debtor, was discharged on the Lords Act. Plaintiff afterwards brought an Action of Debt on the Judgment, and Defendant being arrested thereupon, moved to be discharged, which was ordered on hearing Counsel on both Sides. The Person after being once discharged from an Execution by Act of Parliament, is to be free, and cannot be afterwards retaken by Execution or Action on the Judgment. *Chapple* for Defendant; *Wright* for Plaintiff.

Cain against Molineux.

DEFENDANT moved to be discharged out of Execution, being Steward of the Household to Baron *Bourk*, a Foreign Envoy, and obtained a Rule to shew Cause, which was afterwards discharged on hearing Counsel on both Sides, it appearing that Defendant was a Trader, that he resided at his own House in the Old Palace.

Palace-Yard Westminster, and that the Envoy was at *Hanover* at the Time of the Arrest. *Eyre* for Plaintiff; *Chapple* and *Skinner* for Defendant.

Deferisay against O'Brien.

DEFENDANT being arrested at Plaintiff's Suit, moved upon the Act of Parliament of Queen *Anne* to be discharged out of Custody upon Affidavits that he was a Courier employed in the Service of Sir *Thomas Geraldino*, Envoy from the King of *Spain*, and (during Recess from Journeys wherein he was frequently employed by the Envoy) did eat at his House among his other Servants, and was paid Wages by him. It was insisted for Plaintiff, that Sir *Thomas Geraldino* was not a publick Minister within the Act of Parliament, but only an Agent for the Court of *Spain*, to treat with the *South Sea Company*: That admitting him to be a public Minister, a Courier or Messenger, who is paid for each Journey according to his Desert, and not a certain Sum for Wages by the Year, is not a Domestick Servant. It fully appeared by Affidavits produced on Behalf of Plaintiff, that Defendant was a Trader, and consequently not entitled to the Benefit of the Act of Parliament. The Rule to shew Cause why Defendant should not be discharged out of Custody was set aside. *Ward against Purcell*, Mich. 2 Geo. 2. in B. R. was quoted. *Chapple*, *Eyre*, and *Skinner* for Defendant; *Comyns* and *Wright* for Plaintiff.

Kirke against Burrowes. Trinity 10 Geo. 2.

DEFENDANT obtained a *Superfedeas* for Want of Prosecution; but before he was discharged by Virtue thereof, Plaintiff caused him to be charged in Execution. Defendant was ordered to be discharged with Costs, consenting to bring no Action. *Eyre* for Defendant; *Skinner* for Plaintiff.

Hannot *against* Farettes.

DEFENDANT being brought to the Bar by the Warden of the *Fleet* by Virtue of a *Habeas Corpus ad satisfaciendum*, in order to be charged in Execution at Plaintiff's Suit, produced the Allowance of a Writ of Error; and objected, that as such Writ was sealed and allowed, he ought not to be charged; but the Court said they would not intermeddle, Plaintiff might proceed at his Peril; and thereupon Defendant was charged in Execution.

Hannot *against* Farettes. Mich. 10 Geo. 2.

PLAINTIFF caused Defendant, a Prisoner in the *Fleet*, to be charged in Execution after Writ of Error sealed and allowed, but before Notice thereof to Plaintiff's Attorney. The Court set aside the Commitment in Execution, but refused to grant an Attachment against Plaintiff's Attorney, because, though the Writ of Error be a *Superfedeas* from the Allowance, no Contempt is incurred till after Notice of it. *Chapple* for Defendant; *Eyre* for Plaintiff.

Wright, Administrator, *against* Kerwill.

DEFENDANT was discharged out of Custody by *Superfedeas* on entering a common Appearance, for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Plaintiff afterwards obtained Judgment, and Defendant being taken in Execution, moved to be discharged, insisting that after a *Superfedeas* his Person was free, and could not be again detained by Process in the same Action, and it seems to have been the Sense of the Court, when a Rule was made *Hil. 8 G. 2.* that if after a *Superfedeas* an Action of Debt be brought on Judgment, Defendant shall be discharged without Bail. It was urged for Plaintiff, that Defendant having never been a Prisoner after Judgment might at any Time during his Confinement put in Bail to the Action, and being discharged on mesne Process only before Judgment, he is after Judgment liable to be taken in Execution. The Court took
Time

Time to consider of this Matter, and after consulting the Judges of the other Courts, determined that in this Case Defendant having been discharged by *Superfedeas* before Judgment, was not finally discharged; but after Judgment is subject to be taken in Execution; though where a Defendant is superseded after Judgment for want of being charged in Execution (within two Terms after Judgment obtained) his Person cannot be afterwards taken in Execution. *Eyre* for Defendant; *Chapple* for Plaintiff.

Clarke *against* Venner.

THE same Case.

Nicholas Fling's Case, Hil. 10 Geo. 2.

DEFENDANT, being in Custody of the Sheriffs of *Bristol*, brought his *Habeas Corpus* to be removed to the *Fleet*, and tendered it to the Sheriffs with Seven Guineas (exceeding 1*s.* *per* Mile) which the Sheriffs refused to accept, and insisted on 10*l.* Defendant moved for an Attachment against the Sheriffs, and obtained a Rule to shew Cause, which was afterwards made absolute. *Eyre* and *Corbett* for Defendant; *Draper* for the Sheriffs.

Mendes *against* Wolfe.

DEFENDANT, an insolvent Prisoner, detained by two Executions, was by one Plaintiff allowed 2*s.* 4*d.* a Week on being continued in Custody according to the Act of Parliament; and the other Plaintiff also insisting to detain Defendant, the Question was what Allowance he ought to make; and held *per Cur.*, that the second Plaintiff must also allow Defendant 2*s.* 4*d.* *per* Week.

Sibley *against* Sibley.

DEFENDANT taken in Execution, *September 28, 1736*, by *Ca. Sa.* returnable *tres Mich.* petitioned to be discharged on the Acts for Relief of Debtors; but *per Cur'* he comes too late; he ought to apply before the End of the first Term after the Arrest, because the Sheriff is liable to answer for an Escape from that Time, and not from the Return of the Writ.

Harrison's Case. Easter 10 Geo. 2.

GEORGE Harrison an Attorney, being in *Serjeants Inn* waiting to attend Mr. Justice Fortescue on a Summons, was prevailed on by an Agent for one of his Creditors, under Pretence of Business, to go with him to a Coffee-house in *Chancery-Lane*, near *Serjeants Inn*, where after the Hour appointed for the Attendance at the Judge's Chamber was expired, Harrison was arrested. It appeared that Harrison had left his Clerk at the Judge's Chamber, with Directions to call him when the Judge was there, and at Leisure. The Court ordered Harrison to be discharged. Chapple for Harrison; Eyre for the Creditor.

Hand *against* Kelly. Hilary 11 Geo. 2.

DEFENDANT being detained (*inter alia*) by a *Capias utlagatum* founded on an Outlawry upon mesne Process prosecuted by Plaintiff, was brought to the Sessions of the Peace by Virtue of the compulsive Clause in insolvent Debtors Act, 10 Geo. 2. and discharged, delivering a Schedule of his Effects. He was afterwards again arrested by a *Capias utlagatum* renewed, and now moved to be discharged, giving a Warrant to appear *secundum Statut'*. Upon shewing Cause, the Court was of Opinion, that as Defendant in this Case cannot have any Advantage by pleading, the Motion is proper. No Appeal lies from the Sessions; the Determination there is final. Defendant is discharged from all Debts except Debts to the Crown. The Rule was made absolute to discharge Defendant without Costs, Eyre and Wright for Defendant; Urlin for Plaintiff.

Davis

Davis *against* Hall.

DEFENDANT moved for a *Superfedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Declaration delivered. Declaration was of *Easter* Term, and the final Judgment signed in *Michaelmas* Vacation last. Plaintiff urged, that the Judgment being a Judgment of *Michaelmas* Term, though not signed till the Vacation, is sufficient to prevent *Superfedeas*; but *per Cur'*, the three Terms are always taken to be inclusive of that Term whereof the Declaration is, and unless Plaintiff proceeds to sign final Judgment within the third Term he is too late. Rule absolute for *Superfedeas*, *Draper* for Plaintiff; *Hussey* for Defendant.

Clayton *against* Stapp. Easter 11 Geo. 2.

DEFENDANT brought into Court by *Habeas Corpus ad satisfaciendum*; Serjeant *Agar* objected against his being charged [in Execution, Mr. Justice *Portescue* having made an Order for a *Superfedeas* May 1, which was lodged with the Warden, and allowed, and Appearance entered; Defendant was superfedable last Term, and ought to have the compleat Benefit; but Defendant not having served the Order, nor allowed the *Superfedeas* till after *Habeas Corpus* was lodged with the Warden; *Cur'*: He must be charged, and he may apply afterwards as he shall be advised, Plaintiff may proceed at his Peril.

Cock *against* Kerridge. Trinity 11 & 12 Geo. 2.

DEFENDANT having obtained a Rule to plead doubly (*Non Assumpsit* and *Non assumpsit infra sex annos*) Plaintiff moved to discharge it, insisting that Defendant, who was a Prisoner in the *Fleet* at the Time of his being charged with the Declaration before this Rule obtained, was discharged at the Sessions of the Peace by the compulsory Clause in the Insolvent Debtors Act 10 G. 2. and being at large could not regularly apply for the Rule to plead doubly, without first entering a common Appearance; which was not done, The Question was never determined,

terminated, but by Consent Plaintiff had Leave to discontinue without Costs. *Skinner* and *Umlin* for Plaintiff; *Wright* for Defendant.

Baldwin against O'Carroll.

DEFENDANT rendered himself into the Custody of the Warden of the *Fleet* Prison as a Fugitive for Debt, to take the Benefit of the late Act of Parliament, 10 Geo. 2. Plaintiff tendered a Declaration to the Warden, which he refused to accept, and thereupon Plaintiff moved for Leave to proceed, and had a Rule to shew Cause; but the Court seeming to be of Opinion that Defendant being in the Warden's Custody for a particular Purpose only, was not liable to be charged with Declaration, Plaintiff consented to waive his Proceedings, and the Rule was discharged. *Parker* for Plaintiff; *Umlin* for Defendant; *Eyre* for Warden.

Asheley against Sutton. Hilary 12 Geo. 2.

RULE to shew Cause why a *Superfedeas* should not issue to discharge Defendant out of Custody for want of being charged in Execution within two Terms. Plaintiff's Attorney, who lived in *London*, had sent down a *Ca. Sa.* directed to the Sheriff of *Exeter* instead of *Devon*, which being sent back, he rectified the Mistake, got it resealed, and sent it again in Time (as he thought) to an Attorney at *Exeter*, with Directions to charge Defendant in Execution; but being mistaken as to the Time of the Post's coming into *Exeter*, it came too late, and Defendant was not charged within the Term. It was urged for Defendant, that though the general Rule of Court directs a *Superfedeas* to issue unless Cause generally, and not confine Plaintiff to any particular Matter, yet nothing has ever been admitted as good Cause against a *Superfedeas*, but a Treaty for an Accommodation, where Proceedings have staid at Defendant's Request; and if Defendant be not charged within the limited Time, through the Ignorance of Plaintiff's Attorney, Plaintiff and not Defendant must suffer. Enlarging the Matters to be shewn for Cause against *Superfedeas* will be productive of Motions, and render the Practice uncertain. And of this Opinion was Mr. Justice *Fortescue Alland*. But *per Capital & al'* Just^s any reasonable Cause may

may be shewn. The Debt here is large (700*l.*) and no Intention to oppress the Defendant appears; the want of Defendant's being charged in Time is by mere Mistake, and through Accident; the *Ca. Sa.* when properly directed and resealed is a new Writ. It is common to dispense with the Words of an Act of Parliament (a stronger Case than Rule of Court); where Insolvent Debtor applies to be discharged for Non-payment of 2*s.* 4*d.* *per Week*, the Court refuses it, unless the Default of Payment be wilful. Equity relieves in the Execution of Powers upon the Head of Accident. This is a Cause within the Meaning of the general Rule. The Rule discharged. *Wright* for Plaintiff; *Eyre* for Defendant.

J. Munoz against Levi. Easter 12 Geo. 2.

DEFENDANT being charged in Execution at Plaintiff's Suit for 33*l.* 10*s.* and with no other Execution, petitioned to have the Benefit of the Lords Act, and being brought into Court, Plaintiff objected that Defendant was now charged with another Execution at the Suit of *A. Munoz* for 182*l.* and being charged for more than 100*l.* could not have the Benefit of the Act. The Court held, that they must consider the Charge as it stood at the Time of the Petition, and therefore with Regard to the Plaintiff *J. Munoz*, Defendant was within the Act.

Morse against Warren. Mich. 11 Geo. 2.

MOTION to stay Proceedings against Sheriff of *Hertfordshire* on a Six Days Rule to bring in the Body of Defendant. The Sheriff had returned a *Capi*, upon which this Rule was founded. The Defendant went to Gaol for want of Bail, and the Gaoler let him go at large, (of which Affidavit was made) but Defendant was a Prisoner at the Time of the Motion. The Sheriff gave Notice to stay Proceedings, or that Plaintiff might bring a *Habeas Corpus* at his own Charge. *Cur'* discharged the Rule. *Skinner* and *Eyre pro Vic'*; *Prime pro Quer'*.

*Berryman against Gilbert and his Wife. Trinity 14
Geo. 2.*

Defendants were brought into Court the second Time from the *Fleet* Prison to be discharged from an Execution pursuant to the Statute 2 *Geo. 2.* *Wright* for Plaintiff insisted upon detaining Defendants in Custody upon allowing them 2 s. 4 d. *per Week*, and produced a Note signed *John King*, Attorney for Plaintiff, promising to pay the same, and an Affidavit that Plaintiff was abroad in Foreign Parts, so that Plaintiff's Attorney could not procure a Note signed by his Client. The Court held this Note insufficient within the Words of the Act, and for want of a Note signed by Plaintiff himself Defendants were discharged. Vide *Warrington against Elliot. Easter 7 Geo. 2.*

Barker against Palmer.

THE Court made a Rule absolute to discharge Defendant upon the Lords Act for Non-payment of 2 s. 4 d. *per Week*, undertaken to be paid by Plaintiff at *Norfolk* Assizes (conformable to the settled Practice of the Court of *King's Bench*) a Record of the Proceedings at the Assizes being sent to this Court signed by the Judge of Assizes.

Mabson against Butler. Mich. 13 Geo. 2.

RULE to shew Cause why Defendant should not be discharged out of the *Fleet* Prison by *Superfedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Render. It appeared that Defendant had escaped, and had been a long Time out of Custody. *Per Cur'*: Let the Rule be discharged; in this Case the Time of Defendant's Recaption or coming again into Prison shall be looked upon as the Time of the Render. *Eyre* for Plaintiff; *Price* for Defendant.

Huggins *against* Bambridge, a Prisoner in the Fleet.

DEclaration was delivered in *Hilary* Term last, with an Imparlance; and in *Easter* Term Defendant pleaded, and Plaintiff demurred to the Plea on the first Day of last Term. Defendant joined in Demurrer, and Plaintiff not proceeding farther to a *Consilium*, or otherwise, all last Term, Defendant moved for a *Superfedeas* for want of Plaintiff's proceeding to Judgment within three Terms after Declaration, pursuant to the Rule *East. 8 Geo.* It was urged for Plaintiff, that the Plea being very long and special, Plaintiff could not, probably, have procured an Argument last Term; and if he had, it was unlikely the Court would have given Judgment on the first Argument. *Per Cur'*: Plaintiff has not proceeded as he might; he is not to judge whether the Court would have determined on the first Argument or not, it is an affected Delay to the Prejudice of Liberty: Plaintiff has shewn no good Cause why he did not proceed. The Rule is general, Plaintiff is to proceed to Judgment, (*i. e.* final Judgment) within three Terms, in all Cases, inclusive of the Term of which the Declaration is delivered (the Intervention of the Argument of a Demurrer, or Trial of an Issue, makes no Difference) unless Plaintiff can shew it was out of his Power to proceed so fast. Defendant shall take no Advantage of the Court's Delay, or in Counties where the Assizes are held but once a Year, it may be impossible to comply with the Letter of the Rule; but here the Delay is Plaintiff's. Let a *Superfedeas* issue, which extends only to discharge Defendant's Person from Confinement; the Action still remains pending, and Defendant's Remedy, as to *Non-pros*, is separate and distinct from the *Superfedeas*. *Skinner, Wynne*, and *Agar* for Defendant; *Eyre and Bootle* for Plaintiff.

Poulter *against* Salmon. Hilary 13 Geo. 2.

DEfendant had been superseded after Judgment for want of being charged in Execution within two Terms. Plaintiff afterwards brought an Action of Debt on the Judgment; and having obtained a second Judgment, caused Defendant to be taken in Execution *October 9, 1739.* Defendant, last Term, applied for a *Superfedeas*; and the Court took Time to consider whether he was supersedable or not. This Term, pending the Consideration
of

of the Court upon the *Superfedeas*, Defendant petitioned, and had a Rule to be carried to next Assizes to be discharged by the Lords A&C. The last Rule was ordered to be discharged. The Application for the *Superfedeas* and for this Rule are inconsistent. *Bootle* for Plaintiff; *Prime* for Defendant.

Dorrell *against* Bishop.

UPON an Affidavit that Plaintiff absconded, and could not be personally served with a Rule to shew Cause why Defendant should not be discharged pursuant to the Lords A&C, Court made a Rule, that Service upon Plaintiff's Attorney should be deemed good Service, and upon Affidavit of Service on Plaintiff's Attorney Defendant was discharged, no Person attending on Plaintiff's Behalf to oppose Defendant's Discharge.

Ash *against* Day. Mich. 14 Geo. 2.

THE Declaration was of *Hilary* Term last, and Interlocutory Judgment signed the same Term. A Writ of Inquiry was executed, returnable *Tres Trin'* last; but being set aside by the Court, because the same was executed before a Person not properly deputed by the Sheriff, Defendant applied for a *Superfedeas* for Want of Plaintiff's proceeding to final Judgment within three Terms after the Declaration, and obtained a Rule to shew Cause, which was made absolute. *Prims* for Plaintiff; *Willes* for Defendant.

Maddock *against* Fletcher.

Defendant being arrested by Bill of *Middlesex* at Plaintiff's Suit, and being charged also with a *Capias* at another Person's Suit in this Court, removed himself to the *Fleet* Prison by *Habeas Corpus* 7th *May* 1740, and Plaintiff not having declared within two Terms, Defendant applied for a *Superfedeas*. Plaintiff objected, that the Motion here was improper, and Defendant ought to apply to the Court of *King's Bench*, from whence the first Process issued. But *per Cur'*: Defendant's Application is regular, and agretable to the constant Practice of this Court and the Court
of

of King's Bench. The Removal to the *Fleet* being before a Declaration delivered, Plaintiff must declare in this Court, he cannot declare in the Court of *King's Bench*, (unless he removes Defendant by *Habeas Corpus ad respondendum*;) and for Want of a Declaration Defendant is to be discharged by this Court. Where a Defendant is removed after Declaration delivered, the Action must proceed in that Court wherein Plaintiff declares, and Defendant is to be superseded by that Court for Want of subsequent Prosecution, though detained in the Prison of the other Court. *Prime* for Plaintiff; *Belfield* for Defendant.

Mich. 15 Geo. 2.

ON the Warden of the *Fleet's* Petition, *inter alia* desiring Leave to shut up the Prison Gate sooner than the Time appointed for that Purpose, it was prayed, that two Prisoners might be brought into Court on the Day of hearing the Matter, to oppose the Petition on Behalf of the Prisoners, (*viz.*) *John George*, detained by mesne Process of this Court, and *James Browne*, detained in Execution out of the *Exchequer* at the Suit of the King. *Per Cur'*: *George* may be brought up by Rule; but *Browne* being held by an Execution from another Court cannot be brought up without an *Habeas Corpus*.

Coates's Case. Easter 15 Geo. 2.

MAY 6th *Robert Coates* was brought into Court by the Gaoler, by *Habeas Corpus* directed to the Sheriff of the Town of *Newcastle upon Tyne*; and by the Return *Coates* appeared to be charged with Process of this Court, and with several Writs of *Capias* from the Court of *Exchequer*, at the Suit of the King for 800 *l.* and upwards, as a Smuggler. *Per Cur'*: The *Habeas Corpus* is not returnable till the 12th instant. Defendant must be then brought into Court again, and in the mean Time give Notice to the Solicitor of the Customs. The King may chuse his own Prison; Defendant cannot be committed to the *Fleet* without the Consent of the Crown. May 12th, it appearing by Affidavit that Mr. *Metcalf*, Solicitor of the Customs, had, by the Direction of the Commissioners, signed a Consent, and Serj. *Prime* consenting *pro Rege*, Defendant was committed to the *Fleet*. *Boyle* for Defendant.

Ashdowne *against* Fisher.

RULE made absolute to discharge Defendant, a Bankrupt, taken in Execution for a Debt accrued before the Bankruptcy. Defendant could not plead his Discharge in the first Instance, because he did not obtain his Certificate till after he was obliged to plead. But it was insisted by Plaintiff's Counsel, that he might have pleaded *Post darrein Continuance*. These Cases must be considered equitably. *Blackwell against Coates*, 2 *Peere Williams* 70. No Concealment appears.

Judge *against* Torr. Trinity 16 Geo. 2.

Defendant, after Judgment, was rendered to the *Fleet* Prison in Discharge of his Bail in *Hilary* Vacation last, and this Term moved in the Treasury for a *Superfedeas*, for Want of being charged in Execution within two Terms, pursuant to the General Rule 8 *Geo.* insisting, that the Render must be taken to be of *Hilary* Term; the Words of the Rule are, *within two Terms after such Judgment obtained*; in Case of a Render after Judgment, the Words should be, *after such render*. There must be a new Rule to settle the Practice in this and other Particulars, wherein the old Rule is defective. A Rule was granted to shew Cause why a *Superfedeas*, which upon Affidavit of Service was made absolute, no Cause being shewn by Plaintiff to the contrary.

On Behalf of Greenwood.

Defendant, a Prisoner in the *Fleet* charged on mesne Process for 402*l.* 15*s.* had not given Security to the Warden for the Liberty of the Rules, petitioned the Court, and obtained a Rule for the Warden to shew Cause why a Day-Rule should not be granted to the Petitioner, and why a Tipstaff should not take him to *Hounslow*, to meet and treat with his Creditors, and bring him back the same Day. *Skinner* for the Warden observed, that no Affidavit was filed to verify the Allegations in the Petition; and that no Instance could be shewn where the Court gave Leave to carry a Prisoner such a Distance from the Prison as desired.

That

That one *Collett* had applied to be carried into *Kent*, for the same Purpose, in Lord Chief Justice *Eyre's* Time, and was denied. The Rule was discharged.

Hill *against* Wadmore.

Defendant, an Infant about sixteen Years of Age, being charged in Execution at Plaintiff's Suit, for 60 *l.* Damages and 30 *l.* Costs, total 90 *l.* recovered against him by Plaintiff, in an Action for driving a Waggon upon Plaintiff, whereby his Arm was broken, petitioned the Court to be discharged upon the Lords Act; which was opposed by *Wynne* for Plaintiff; who urged, that this is not a Debt within that Act of Parliament, which was made for the Ease and Relief of Prisoners willing to satisfy their Creditors as far as they are able, and doth not extend to Actions for Torts, Negligences, &c. It appeared on the Trial, that though Defendant was called to, and might have stopped his Waggon, yet he obstinately drove on; and Plaintiff was a poor Waterman, having a Wife and six Children, three of whom he maintained by his Labour, which he can hardly do since his Arm was broken by Plaintiff. *Per Cur'*: The Damages and Costs recovered are become a Debt, and Defendant must have the Benefit of the Act of Parliament; but We have Power to moderate the Allowance by Plaintiff. Let the Defendant be remanded, upon Plaintiff's allowing him 6 *d.* a Week.

Tompkins, Attorney, *against* Woodley. Mich. 16
Geo. 2. 27th November 1742, in the Treasury.

Plaintiff delivered a Declaration against Defendant, a Prisoner in the County Gaol for *Devon*, before the End of the second Term, *viz.* on Sunday 4th July, three Days before the End of *Trinity* Term last. Defendant insisted, that this Delivery (being on a Sunday) was void, and applied for a *Superfedeas*; which, upon hearing the Agents on both Sides, the Judges refused to grant. Defendant hath not made Affidavit that he did not receive the Declaration, nor had it on the Day after the Delivery. The Act of Parliament touching Arrests, &c. on Sundays, 29 Car. 2. cap. 7. doth not take in this Case.

Dalrymple and his Wife *against* Baynham. Easter 16
Geo. 2.

Defendant being discharged by the Lords Act, assigns his Effects to Plaintiffs. Afterwards he is charged in Execution upon a second Judgment, obtained by the same Plaintiffs; and on his Discharge, the second Time, the Court directed another Schedule to be made, containing the same Effects as the First; taking Notice, that they had been already assigned; and then a second Assignment to the same Plaintiffs, to make the Effects subject to the last Execution, in case they should be more than sufficient to satisfy the First.

Sandys *against* Splivey. Trinity 16 & 17 Geo. 2.

Defendant brought into Court by the Sheriff of *Middlesex* from *Newgate* (the County Gaol) by *Habeas Corpus ad Satisfaciend'*; and Plaintiff's Counsel moved, that he might be charged at Plaintiff's Suit for 300 *l.* and upwards, recovered by Judgment, (the Roll being in Court) and committed to the *Fleet* Prison in Execution. The Counsel for the Crown opposed the Motion. It appeared that Defendant was charged with Process from the Court of *Exchequer* by the Crown for 30,000 *l.* for running Goods: That the Prosecution against him was commenced in *March* 1742, and the Informations were at Issue. That Plaintiff's Debt was by Bond dated in *September*, and a Warrant to enter Judgment thereon in *December* 1742, the Judgment was signed, and the *Habeas Corpus ad Satisfaciend'*, the first Process at Plaintiff's Suit, issued 4th *June* 1743. *Per Cur'*: The King and his People are one. The Prerogative of the Crown is incorporated with the Law of the Land. Defendant is not intitled to this *Habeas Corpus*; it is brought by the Plaintiff, and the Contest is merely between the King and the Plaintiff. The King, by his Prerogative, hath a Right to sue in what Court he pleases, and to imprison his Debtor in the Gaol for the County or Liberty where he is arrested. If this Court should have inadvertently committed Defendant to the *Fleet*, by the Practice of the Court of *Exchequer*, the Attorney General might have had a new *Habeas Corpus*, and that Court would have sent Defendant back to *Newgate*. The
Priority

Priority of Suit is in the Crown; though neither it, nor the Priority of the Debt, but the Choice of the Prison, is the only present Question. The Demand of the Crown is always to be preferred before that of any private Person. The Escape Warrant Act extends not to the Crown, because before that Act the King had a Right to confine his Debtor where he pleased. The Court have no discretionary Power in this Case. Defendant was remanded. Plaintiff may charge him with a *Ca. sa.* in Custody of the Sheriff of *Middlesex*. *French's Case*, *Salkeld* 353. *Stiles* 363. Counsel were heard for the Warden of the *Fleet*, who objected against receiving a Prisoner charged by the Crown with so large a Sum. *Skinner* and *Prime* for the King; *Wynne* and *Hayward* for the Plaintiff; *Birch* and *Willes* for the Warden of the *Fleet*.

Poole *against* Cook. Hilary 17 Geo. 2.

Defendant, a Prisoner, applied to be discharged by *Superseas*, for Want of being charged in Execution within two Terms after Judgment. Plaintiff excused himself by the Delivery of a *Capias ad Satisfaciend'* to the Gaoler within due Time. But the Court held that to be insufficient. The *Capias ad Satisfaciend'* ought to have been delivered to the Sheriff, and the Sheriff's Warrant to the Gaoler. Rule absolute for *Superseas*. *Hayward* for Defendant; *Willes* for Plaintiff.

Hedley *against* Brown. Trinity 17 & 18 Geo. 2.

AFTER a Writ of Inquiry executed, Defendant moved to stay the Proceedings; Plaintiff, since the Action brought, having been discharged by the Insolvent Debtors Act, and having assigned his Debts and Effects for the Benefit of his Creditors, the Court refused to make any rule; the Action brought before the Discharge, must proceed. *Prime* for Defendant.

Mich. 18 Geo. 2.

WEAVER, charged in Execution by two several Creditors, and applying to be discharged upon the Lords Act, was opposed

posed by both Creditors, and remanded ; upon both Creditors giving him a joint Note to allow him 2*s.* 4*d.* *per Week.*

Dawson and others *against* Draper. Mich. 18 Geo. 2.

DEclaration delivered against Defendant, a Prisoner in the *Fleet*, in *Hilary* Term last, and Rule to plead then given ; in *Easter* Term following Plaintiffs, without giving a new Rule to plead, signed Interlocutory Judgment, and executed a Writ of Inquiry in *Easter* Vacation ; but the Attorney for Plaintiffs finding himself to be irregular, in the Beginning of last Term obtained a Rule to quash the Writ of Inquiry and Inquisition, waived his Judgment, and 26th *May* in last Term, which Term began 25th *May*, gave a new Rule to plead, *May* 31st Defendant pleaded a Sham Plea, and Plaintiff replied, concluding *ad Ratiam* ; and gave eight Days Notice of Trial, inclusive, for the last Sitting within last Term. Defendant joined Issue ; but objected to the Notice of Trial, refusing to accept short Notice ; whereupon Plaintiff countermanded, and gave new Notice for the Sitting after last Term ; when Plaintiff obtained a Verdict on a Promissory Note, without Defence. Defendant now applied for a *Superfedeas*, for Want of Plaintiff's proceeding to Final Judgment, within three Terms after Declaration, inclusive. And the Court was of Opinion, that Defendant was intitled to a *Superfedeas*. Defendant is not to be prejudiced by the Mistake of Plaintiff's Attorney ; which cannot be considered in the same Light as an accidental Omission was, in the Case of *Ashley and Sutton*, *Hil.* 12 Geo. 2. Defendant is within the Words of the Rule, which is to be construed in Favour of Liberty. But it appearing, that Defendant was detained in Custody by three other Actions, and being liable to be immediately charged in Execution in this Action, the Court thought it nugatory to grant a *Superfedeas* ; and the Rule to shew Cause why a *Superfedeas* should not be issued was discharged. *Wynne* for Plaintiff ; *Skinner* for Defendant.

Childs *against* Prows. Hilary 18 Geo. 2.

WITHIN two Terms after Final Judgment, Plaintiff, instead of charging Defendant in Execution, charged him with a Declaration in an Action of Debt on the Judgment.
The

The Court held this Declaration vexatious, and no Cause against a *Superfedeas*; and the Rule to shew Cause why a *Superfedeas*, was made absolute. *Gapper* for Defendant; *Wynne* for Plaintiff.

Abdy, Administrator, *against* Hopkins, Widow. Abdy, Assignee, &c. *against* The Same.

PLaintiff had two different Causes of Action against Defendant, one as Administrator, the other as Assignee. Defendant was arrested at Plaintiff's Suit, as Administrator; but in the Title of the Affidavit for Bail, Administrator was omitted, though put into the Writ. Defendant remained in Custody for Want of Bail. Plaintiff did not declare as Administrator, agreeable to his Writ, which was a *Testat'* out of *Middlesex* into *Surry*, but made a new Affidavit of his other Demand as Assignee, and delivered a Declaration in *Surry* for it, indorsed for Bail. Rule to shew Cause why *Superfedeas*, in the first Cause, made absolute, the Affidavit being a Nullity; but the Arrest is not void in the second Cause. The Rule discharged.

Parsons, Widow, *against* White. Easter 19 Geo. 2.

DEFendant, arrested by a *Capias* at Plaintiff's Suit, as Executrix of her late Husband, removed himself to the *Fleet*. Plaintiff finding her Action wrong as Executrix, made a new Affidavit for Bail, and charged Defendant with a new Declaration in her own Right. Defendant moved for a Common Appearance and *Superfedeas*; insisting, that as his Imprisonment was wrongful *ab origine*, Plaintiff ought not to graft upon it. No Oppression appears, but the Nature of the Demand was mistaken. If there had been two different Causes of Action, the second Declaration would have been a good Charge; but there being but one and the same Cause of Action, Rule absolute to set aside Proceedings and Judgment, without Costs. *Bootle* for Defendant; *Prime* for Plaintiff.

Stannard *against* Fleet.

A Peremptory Rule being served on Sheriff of *Suffolk* to bring Defendant's Body into Court, the Sheriff, instead of putting in Bail above (as usual) brought the Defendant in Person into Court. The Court committed him to the *Fleet*, charged with the Writ of *Capias ad respondend'* at the Plaintiff's Suit.

Pryme and others *against* Moore. Hilary 20 Geo. 2.

Defendant, whilst at large, was served with a Copy of Process, with Notice to appear; but before Declaration became a Prisoner in the *Fleet*. Plaintiff, by Virtue of an Affidavit of Service, entered an Appearance for Defendant, left a Declaration in the Office, and gave Defendant Notice thereof. Defendant moved to set aside the Declaration and subsequent Proceedings; insisting, that as he was a Prisoner at the Time of the Declaration, it ought to have been delivered to the Turnkey of the *Fleet*. It was urged for the Plaintiff, that as the Proceedings were regularly commenced under the Statute, they had a Right to pursue the Method prescribed by the Rule of Court to establish the Practice thereupon; but Defendant being disabled from coming abroad to take the Declaration out of the Office, and there having been no Method to charge a Prisoner with a Declaration, but by *Habeas Corpus*, till the Statute of King *William* the Third, the Court thought the Declaration should have been delivered at the *Fleet*, and made the Rule absolute. *Willes* for Defendant; *Bootle* for Plaintiffs.

Culme *against* Dingle. Trinity 21 Geo. 2.

Defendant was a Prisoner in the County Gaol for *Devon*, charged by the present and other Plaintiffs. Plaintiff discontinued his Action, and paid Costs; and then served a Copy of a common *Capias*, with Notice to appear, on Defendant in Custody; and, on Affidavit thereof, entered an Appearance pursuant to the Statute, left Declaration in the Office, and gave Notice thereof to Defendant; and for Want of a Plea signed Judgment, and executed *Fieri facias*,

De.

Defendant obtained a Rule to shew Cause why the Proceedings should not be set aside ; insisting, that he ought to have been charged with the Declaration as a Prisoner. But as Plaintiff, since the Act to prevent vexatious Arrests, had no other Way of charging Defendant with a common *Capias* than as above, the Method Plaintiff has taken is regular.

The Notice of the Declaration was dated 28th *January*, to plead within eight Days ; and the Judgment signed 5th *February*. Objected, That the Judgment was signed a Day too soon ; but overruled. The Words of the Notice are not, *from the Day of the Date*, but *from the Date*, which is the Delivery. Rule discharged. *Dra-per* for Defendant ; *Gapper* for Plaintiff. This Case differs from *Prime and others* against *Moore* last *Hilary Term*, where Defendant was arrested when at large, and became a Prisoner in the *Fleet* before Declaration.

Meredith *against* Barry, Esquire, commonly called Lord Buttevant.

AFTER Defendant was supersedable for Want of Prosecution, Plaintiff applied for Leave to discontinue ; which was ordered without Prejudice ; and after the Discontinuance, Defendant was superseded, but being detained in the *Fleet* by other Causes, Plaintiff makes a new Affidavit of his old Debt, (adding another small Demand not bailable) and charged Defendant with a new Declaration indorsed for Bail. The Court determined, That Defendant ought not to be held to Bail for the old Cause of Action, as to which he had been superseded, and ordered him to be discharged as to the new Declaration, on entering a common Appearance. *Willes* for Defendant ; *Skinner* for Plaintiff.

Leeke *against* Leighton, Baronet.

Defendant, a Prisoner in the *Fleet*, was charged twice in Execution at Plaintiff's Suit, once before and once after 1st *January* 1747. Defendant moved to pay Principal, Interest, and Costs on the Judgment, whereby he was charged before 1st *January*, to prevent Plaintiff's compelling him to deliver up his Estate and Effects,

fects, pursuant to the Insolvent Debtors Act. The Rule to shew Cause was made absolute. *Skinner and Willes* for Defendant; *Prime and Poole* for Plaintiff.

Watt against Alanfon. Trinity 22 & 23 Geo. 2.

Defendant, who was charged in Execution 5th *January* 1748, petitioned the Court the last Day of last Term, for a Rule to be carried before the Judges at next *Northumberland* Assizes, in order to be discharged under the Lords Act, and had a Rule to shew Cause; which was now discharged. The Petition came too late; it should have been preferred, as required by the Act, before the End of last *Easter* Term. *Boatle* for Plaintiff.

White against Hawkes. Easter 23 Geo. 2.

Plaintiff having complained to the Court against Mr. *Carter*, his Attorney, for not attending at *Oxford* Assizes, to oppose Defendant's Discharge under the Lords Act; and *Carter*, for Answer, having made Affidavit that he did attend the *Nisi prius* Court for that Purpose, ready to pay Defendant 2*s.* 4*d.* and to give him Plaintiff's Note for 2*s.* 4*d.* per Week, in Order to keep him in Custody, as directed; but that Defendant was accidentally discharged on the Crown Side, without *Carter's* Knowledge: And before he got out of Custody, or an Order for his Discharge was drawn up, Notice was given to *Wyseman* the Gaoler, that the Discharge was obtained by Surprise, and the Order stopped by the Judge; a Tender of 2*s.* 4*d.* and Plaintiff's Note was made Defendant, who refused to accept the same, and insisting on his Liberty, *Wyseman* let him go. The Court made a Rule on *Wyseman* to shew Cause why an Attachment should not be made against him. But the Fact coming out to be, that Defendant had made an Assignment of his Effects to Plaintiff, previous to his Discharge in the Crown Court, where the Gaoler attended, and heard the Plaintiff called in the usual Manner; and no Contrivance in Defendant's Favour appearing in the Gaoler, the Court discharged the Rule, and left Plaintiff to his Action for an Escape; not thinking it proper to punish the Gaoler in this summary Way, or to assist him against an Action. The Order seems requisite to be drawn up; the Gaoler cannot defend himself without

without it, The Practice has sometimes been to discharge Prisoners of this Sort in the *Nisi prius* Court, and sometimes in the Crown Court, if the Business there be first finished ; but then Notice thereof should be always publicly given in the other Court. The Assignment should always be previous to the Discharge. Where a Prisoner is not ordered to be discharged, but remanded on Plaintiff's undertaking to pay him 2*s.* 4*d.* *per Week*, his Effects ought not at that Time to be assigned, (as has been the Practice, in order that after Failure in Payment, Defendant may be intitled to apply to the Court from whence the Execution issued, for his Discharge there ;) but if Plaintiff should fail to pay the weekly Allowance, Defendant may either apply to be brought into Court at the Assizes, to be discharged there for that Cause, and then make an Assignment ; or to be discharged by the Court above, shewing an Assignment executed, by Affidavit. *Willes* for *Wiseman* ; *Prime* for *Carter* ; *Belfield* for Plaintiff.

Parker, one, &c. *against* Harvey. Easter 23 Geo. 2.

Defendant, who had been brought into Court at *Lincolnshire Assizes* by Rule, pursuant to the Lords Act, and remanded to Prison, on Plaintiff's undertaking to allow him 2*s.* 4*d.* *per Week*, applied to this Court to be discharged for Nonpayment of his weekly Allowance. The Undertaking appeared to be dated 1st *March* 1749, for Payment of 2*s.* 4*d.* on *Monday* in every Week. Plaintiff had not made regular Payments ; when four Weeks were due, 2*s.* 4*d.* only tendered ; after five Weeks due, 7*s.* only tendered ; after the first Default, no Tender of the Money due on *Monday* was made till the *Saturday* following. A Mistake is not to be taken Advantage of, if the Tender be recent ; but in the present Case, the Omissions are not to be dispensed with. Rule absolute to discharge Defendant. *Prime* for Defendant ; *Willes* for Plaintiff.

Pennington *against* Welch. Trinity 24 Geo. 2.

Defendant being brought into Court, by Virtue of an *Habeas Corpus ad Satisfaciendum* directed to the Warden of the *Fleet*, to be charged in Execution on a Judgment obtained by Plaintiff, insisted,

insisted, That as he had been superfedable for two Years past, for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration, he ought not to be charged in Execution. Whereupon the Court remanded him unchanged in Execution, but detained at other Plaintiffs Suits.

Peck against Adams.

THE Defendant was arrested by Writ returnable in *Michaelmas* Term last, and remained in Custody after the End of last *Hilary* Term; Defendant became superfedable for Want of Plaintiff's declaring against him; but not applying for a *Superfedas*, and staying in Prison till last *Easter* Term, Plaintiff then discontinued his first Action; and after tendering Defendant 6*s.* 8*d.* Costs taxed on the Discontinuance, charged Defendant in Custody of the Sheriff of *Hertfordshire*, with a new Writ for the old Cause of Action. Rule absolute for *Superfedas*, on entering a common Appearance. Discharged as to Costs. *Bootle* for Defendant; *Wynne* for Plaintiff.

Tracy against Garmston and another. Trinity 24
Geo. 2.

Defendant *Garmston* was arrested by Process returnable last *Michaelmas* Term; but the other Defendant (who absconded) could not be taken; and Plaintiff not being in a Capacity to declare in this Joint-Action till the other Defendant was brought into Court, or outlawed, endeavoured to excuse himself for not declaring within two Terms, by alledging that he was proceeding to outlaw the other Defendant. Lord Chief Justice thought, that Plaintiff ought to be allowed a reasonable Time to outlaw the other Defendant; but in this Case, he has not shewn that he used all Diligence, as he ought to have done. Rule absolute to supersede Defendant *Garmston* for Want of a Declaration. *Hayward* for Defendant; *Willes* for Plaintiff.

Price *against* Everett. Mich. 24 Geo. 2.

Defendant having been brought into Court in pursuance of the Lords Act, and remanded to the *Fleet* on Plaintiff's undertaking in Writing to allow him 2*s.* 4*d.* a Week, was afterwards made a Turnkey of the Prison Gate, (a Place of Profit.) Plaintiff moved the Court, and obtained a Rule to shew Cause why the Allowance should not be reduced to 6*d.* *per* Week, or such other Sum as the Court should think fit, or Defendant be removed from his Place of Turnkey. On shewing Cause, the Court thought that Defendant ought not to suffer by his good Behaviour, which had merited the Warden's Favour, and preferred him to a Place of Trust and Profit; and that the weekly Allowance having been once determined at 2*s.* 4*d.* cannot be lowered, though at first it might have been settled at a smaller Sum. The Rule was ordered to be discharged. *Willes* for Plaintiff; *Agar* for Defendant.

Smith *against* Peronet. Hilary 24 Geo. 2.

Defendant obtained a *Superfedeas* for Want of Prosecution; but having, whilst in Custody, drawn a Bill of Exchange on a third Person, in Plaintiff's Favour, for Part of Plaintiff's Original Debt, which Draught was refused to be accepted. Plaintiff, as Defendant was going out of Prison, caused him to be arrested, and held to Bail, as the Drawer of said Bill. Defendant swore, that by Agreement between him and Plaintiff, the Draught, if not accepted, was to be delivered back to Defendant. The Court thought, that by this Draught, which, if accepted and paid, would have *pro tanto* discharged Part of the Original Demand, no new Debt was created, ordered a *Superfedeas* to the new Action, on entering a common Appearance. *Willes* for Defendant; *Prime* for Plaintiff.

Gibbs *against* Tupigny de Mailly. Trinity 24 & 25
Geo. 2.

Defendant, a Prisoner in the *Fleet*, being superfedable for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration, summoned Plaintiff before Mr. Justice *Birch*; whereupon Plaintiff (having obtained Judgment after the three Terms were expired) immediately brought a *Habeas Corpus ad Satisfaciendum*, and charged Defendant in Execution. Defendant then applied to the Court, and obtained a Rule to shew Cause why he should not be superfeded, for Want of Plaintiff's proceeding to Judgment within Time; which Rule was afterwards made absolute. The Court being of Opinion, that Defendant had been wrongfully detained in Custody from the Time he became superfedable; and that Plaintiff ought not to graft a good Charge on a wrongful Imprisonment. *Prime* for Defendant; *Willes* for Plaintiff.

Linthwaite *against* Bigbie and Allardyce. Trinity 25
& 26 Geo. 2.

PLAINTIFF obtained a Treasury Rule to shew Cause why he should not have Time to declare against *Allardyce*, who was in Custody, (*Bigbie* absconding, Plaintiff was proceeding to Outlawry against him.) A Case quoted from Secondary *Townsend's* Notes, *Fisher against Tucker and another*, *Hilary 2 Geo. 2.* where one of the Defendants being in Custody, was superfeded in Favour of Liberty, though Plaintiff could not declare till the other Defendant, who absconded, was brought into Court or outlawed. *Vide Tracy against Garmston and another*, *Trin. 24 Geo. 2.* where Lord Chief Justice thought, that if Plaintiff proceeds with reasonable Speed to outlaw the absconding Defendant, the other Defendant, pending that Proceeding, ought not to be superfeded. Rule absolute, without Prejudice to Defendant *Allardyce's* Application for a *Superfedens*.

Roquett *against* Roquett. Trinity 26 & 27 Geo. 2.

DEFENDANT, an Insolvent Debtor was brought into Court the first Time by Rule, in pursuance of the Lords Act, and discharged, making an Assignment of his Effects. A promissory Note was offered Defendant for Payment of 2*s.* 4*d.* *per* Week, given by Plaintiff at *Paris*, where he resided, but no regular Affidavit of Plaintiff's signing the Note being produced, sworn before a Judge or Commissioner of this Court, Defendant cannot be compelled to accept it. Plaintiff's Attorney offered his Note for 2*s.* 4*d.* *per* Week; but such Notes have been often refused. Plaintiff's Attorney desired further Time; but as Defendant's Application was made last Term, and Plaintiff's Attorney had agreed that Defendant should have the Benefit of the Act this Term, further Time was denied.

Keeling *against* Elliott. Trinity 28 Geo. 2.

PLAINTIFF brought his Action originally in the Court of the Town and County of *Kingston* upon *Hull*, and held Defendant to Bail by Affidavit; Plaintiff afterwards removed the Proceedings into this Court by *Certiorari*; Defendant who remained in Prison for want of Bail, applied to be discharged on entering a common Appearance. The Court were of Opinion, That the *Certiorari* having been brought by Plaintiff to remove his own Action he has lost his Bail; the Practice is the same in civil as in criminal Cases. Where Defendant brings a *Certiorari* to remove an Indictment into the *King's Bench*, the Bail is continued; but where the *Certiorari* is brought by the Prosecutor, the Bail is discharged. *Cro. James* 363. *Beston and Buller*. 2 *Lord Raymond* 837. *Crisp against Smith*; the *Certiorari* is admitted to be regular, but by it Plaintiff has relinquished the Bail in the inferior Court, he has lost Bail by his own Act. Defendant ought to be protected against Vexation, and from being harrassed. Rule for a common Appearance, and *Superfedeas* made absolute, by the Opinion of three Judges; Lord Chief Justice not concurring. He compared it to a Discontinuance; a Plaintiff may by settled Practice after holding a Defendant to Bail discontinue his Action, begin *de novo*, and hold Defendant

Defendant to Bail again; Plaintiff's being liable to Payment of Costs on a Discontinuance, does not materially vary the Case. *Poole* for Defendant; *Draper* for Plaintiff.

Atkinson and Wilson *against* Freeburrow. Mich.
29 Geo. 2.

AFTER *Capi Corpas* returned, a peremptory Rule was served on the Sheriff of *Nottinghamshire*, to bring into Court the Body of Defendant within six Days; the Sheriff moved to discharge said Rule, upon the Under-Sheriff's Affidavit sworn the 11th Day of *June* 1755, that Defendant was in the Sheriff's Custody charged with a *Capias ad respondend^o* at Plaintiff's Suit; Plaintiff produced an Affidavit in answer to the Under-Sheriff's shewing that Defendant was seen at large at *Newark* (ten Miles from the County Gaol at *Nottingham*,) on 16 *April* 1755. It was urged for the Sheriff, that Defendant has now been superseded for want of a Declaration within two Terms: the Court laid the Escape and *Supersedeas* out of the Case. Where a Sheriff takes a Bail Bond, by the Rule to bring in the Body is meant perfecting Bail above; but where a Defendant remains in Custody for want of Bail, Plaintiff must declare against him in Custody of the Sheriff; or if he would remove him to the *Fleet* Prison, he must do it by *Habeas Corpus ad respondend^o*. The Court never expect a Sheriff to bring the Defendant's Body into Court by Virtue of the common Rule. *Vide Morse against Warren*, Mich. 11 Geo. 2. *Poole* for Plaintiff; *Prime* for the Sheriff of *Nottinghamshire*.

Webb *against* Dorwell. Hilary 29 Geo. 2.

PLAINTIFF not having declared against Defendant, a Prisoner before the End of *Trinity* last (which was the second Term,) Defendant 28 *October* last took out a Judge's Summons for a *Supersedeas*; Plaintiff's Agent as usual had Time to write to his Client, and not being able to shew Cause against it, on 11 *November* last in the Evening, a *Supersedeas* was ordered, which could not be sealed that Night, but on the 13th was sent *per Post* into the Country. Plaintiff after the Summons served, *viz.* first *November*, charged Defendant

Defendant in Custody with a Declaration, and on the 13th signed Judgment, sent down a *Testat. Capias ad satisfaciendum*, and charged Defendant in Execution. The Court held Plaintiff's Proceedings subsequent to the Time of Defendant's being superfedable, and having applied for a *Superfedas*, to be irregular. Rule absolute to set aside the Judgment and *Testat. Capias ad satisfaciendum*. and for Defendant's Discharge with Costs, Defendant consenting to bring no Action. *Poole* for Defendant; *Hewitt* for Plaintiff.

Courtauld *against* Israel. Mich. 30 Geo. 2.

Defendant having been discharged by the insolvent Debtors Act 28th Geo. 2. moved to be discharged out of Prison, producing an Affidavit, that the Debt for which he was detained in Execution was due before 1st *January* 1755. [the Day in the Act] and a Duplicate of his Discharge. Defendant had been served with Process, and after Appearance entered by Plaintiff, *secund. Statut.* with Notice of Declaration left in the Office, (pleading nothing) Judgment was entered by Default; Plaintiff in Answer to this made Affidavit that the Debt was not due until some Months after 1st *January* 1755. Whereupon the Rule was discharged and the Question avoided, whether or no it was incumbent on Defendant to have pleaded his Discharge under the insolvent Act? *Prime* for Plaintiff; *Davy* for Defendant.

Williams *against* Manwairing and Heron. Trinity
30 & 31 Geo. 2.

Defendant, *Manwairing*, was committed to the *Fleet*, charged with this Action for want of Bail. Defendant *Heron* absconding, and Plaintiff not being able to bring him into Court by Arrest, Process to the Outlawry was taken out against him, *viz.* an Exigent and Proclamation returnable three Weeks *Trinity*, pending the Proceeding, Plaintiff, on the last Day of *Hilary* Term last, had prematurely (to prevent a *Superfedas* for Want of Prosecution) delivered a Declaration in the joint Action at the *Fleet* Prison, before he was intitled so to do. Defendant *Heron* not being in Court, nor outlawed; Plaintiff applied to the Court for Leave to withdraw said Declaration delivered by Mistake, and for Time to declare until the

first Day of next Term, for which Purpose the Rule to shew Cause was made absolute. For Time to declare in common Cases, a Treasury Rule is granted of Course. In this Case it is fit to grant Plaintiff a reasonable Time to outlaw the Absconding Defendant. *Hewitt* for Plaintiff; *Davy* for Defendant *Manuairing*.

Beasley against Smith. Trinity 31 Geo. 2.

MOTION for *Supersedeas* for Want of Declaration in this Court, within two Terms; Defendant committed to the *Fleet* (charged *inter al'* with a Bill of *Middlesex*, at Plaintiff's Suit,) before Declaration delivered, Plaintiff delivered a Declaration in the Court of King's Bench, at the *Fleet*, not a Declaration in this Court; which Declaration in the Court of King's Bench against a Prisoner in the *Fleet* being looked upon as null and void, the Rule was made absolute. *Prime* for Defendant; *Hewitt* for Plaintiff.

In the Matter of *Yapp* an insolvent Debtor. Mich.
32 Geo. 2.

ON the Motion of Serjeant *Davy* for *Jane Parson*, a Judgment Creditor, the Court last Term made a Rule for Mr. *Richard Fleming*, Assignee of the Estate and Effects of *Yapp*, to shew Cause why he should not out of the Estate and Effects of *Yapp*, pay to said *Jane Parson* and the other Judgment Creditors of *Yapp*, the several Sums of Money due to them respectively upon the Judgments recovered by them against *Yapp*, before his Discharge from Imprisonment; or why said *Richard Fleming* should not be removed and displaced from being Assignee as aforesaid.

After hearing Council for *Richard Fleming*, the Assignee, and Consideration had, the Court being of Opinion, that the Fund in the Assignee's Hands was equitable and not legal Assets, Ordered the Rule to be discharged. The Money out of which Payment was to be made, arose from the Sale of an Equity of Redemption in an Estate of *Yapp's*, which had been mortgaged by him in Fee. Had the Fund been legal Assets, the Judgment Creditors must have been preferred to Bond Creditors, &c. but as the Fund is (in the Hands
of

of a Mortgagor) equitable Assets, all the Creditors must be paid *pari passu*.

Brag, one, &c. *against* Harrison. Trinity 33 Geo. 2.

RULE made absolute for a common Appearance and *Superse-
deas*; Plaintiff's Cause of Action being as Indorsee of a pro-
missory Note payable to one *Ripley* or Order; which Note had been
put in Suit against Defendant by *Ripley*, and in that Action a com-
mon Appearance and *Supersedeas* ordered. *Hewitt* for Defendant;
Nares for Plaintiff.

Process, Service thereof, Rules, &c.

Wye *against* Wright. Mich. 6 Geo. 2.

PER Cur': To make a perfect Service of a Rule, the Original
Rule must be sworn to have been shewn to the Party at the
Time of serving the Copy.

Sheridan *against* Ashby. Trinity 6 & 7 Geo. 2.

PLAINTIFF caused Process to be served upon Defendant, who
afterwards removed from his House; and Plaintiff not being
able to find him, followed the first Service, and left the Notice of
the Declaration under the Street-door of Defendant's empty House.
Court held the Judgment regular. *Chapple* for Plaintiff; *Darnal*
for Defendant.

The King *against* Pike. Mich. 7 Geo. 2.

A Rule *Nisi* for an Attachment was served by putting a Copy
under the Door of Defendant's House, and acquainting De-
fendant, who was in the House, with the Contents. The Court
held

held this to be insufficient Service, it being necessary that the Original Rule should be shewn to the Party at the Time of Service.

Rush against Dale.

THE Court made a Rule for *Forrest*, Defendant's late Attorney, to shew Cause why he did not pay Money to the Plaintiff received of Defendant for that Purpose, &c. *Darnal* moved, upon an Affidavit of *Forrest's* concealing himself, that Service of the Rule at his House might be good Service. *Per Cur'*: The Rule not being for an Attachment, doth not require Personal Service.

Hall against Wilby. Hilary 7 Geo. 2.

URLIN moved to stay Proceedings, the Process being served within the Franchise of *Bury St. Edmonds*, and not by the proper Officer, contrary to the late Act of Parliament. *Per Cur'*: The Act only preserves and saves the Jurisdiction of particular Liberties. The Person injured must bring his Action, the Court cannot stay Proceedings.

Chance against Ruffel.

BIRCH moved to stay Plaintiff's Proceedings, the Copy of the Process served upon Defendant not being directed to the Sheriff of any County. The Court denied the Motion, because Defendant cannot take Advantage of this as an Irregularity; if the Writ be vicious, Advantage must be taken thereof in another Manner.

Longbothom against Knap and others.

PLAINTIFF, sued out a common *Clausum fregit*, and the Sum for which he intended to declare in Debt upon a Recognizance of Bail being above 10*l.* caused Defendant to be served with a Copy of the Writ, without any Notice to appear subscribed. Defendant moved

the Proceedings; and upon hearing Council on both Sides, the Court held the Service to be irregular, being of Opinion that in all Cases where Process is served, it must be with Notice to appear, pursuant to the late Act of Parliament. *Comyns* for Defendant; *Skinner* for Plaintiff.

Smith *against* Wintle. Trin. 7 & 8 Geo. 2.

Defendant moved to set aside the Proceedings, upon an Affidavit that he was never served with Process. A Rule was made to shew Cause. Upon shewing Cause, Plaintiff, who served the Writ, made an Affidavit that he put a Copy through a Crevice of the Door of the *Permit Office* in *Moorfields*, Defendant having locked himself in, that he plainly saw him through the Crevice, that he was very near the Door, and that he acquainted him what the Paper (put through the Crevice) was, which the Court held to be sufficient Service, and discharged the Rule. *Darnal* for Plaintiff; *Birch* for Defendant.

Cutcliffe, an Attorney, *against* Standish.

THE Affidavit of Service of the Process was as follows, (*viz.*) *That Deponent served Defendant with a Copy of a Writ, &c. at the Plaintiff's Suit, except what related to other Defendants.* Defendant moved that Proceedings might be stayed. And a Rule was made to shew Cause, which was afterwards made absolute on hearing Council on both Sides. *Chapple* for Plaintiff; *Belfield* for Defendant.

Porter *against* Kent. Mich. 8 Geo. 2.

BARNES moved for an Attachment against the Sheriff of *Lincoln* for not bringing Defendant's Body into Court, according to a peremptory Rule. The Service was by delivering the Original Rule to the Under-Sheriff. Court made a Rule to shew Cause.

Buncombe *against* Love and his Wife. Easter 8
Geo. 2.

THE Process was served upon the Husband only, and not upon the Wife. Held to be good in lieu of Arrest. *Chapple* for Plaintiff; *Comyns* for Defendant. *per W2 Collins & Shepherd*

Byers *against* Whitaker, in County Palatine of Lancaster. Trinity 8 & 9 Geo. 2.

THE Court held that the *Testat' Capias* is the Process to be served upon Defendant, and not the Chancellor's Mandate; upon reading the Act of Parliament 5 Geo. 2. which is explanatory of the Act 12 Geo. By the last Act the Affidavit of Service of the Process is directed to be sworn before a Judge of the Court from whence Process issued, or a Commissioner appointed by such Court, which must be intended of the Courts of *Westminster*, none other can appoint such Commissioners: Before the last Act of Parliament this Court was of Opinion, that the Process to be served must be the Process whereby Defendant might have been arrested before the first Act. *Beale against Smith, Mich. 1 Geo. 2.* But since the last Act to explain the former, the Court of *King's Bench*, and this Court, have held that the first Process must be served. *Birch* for Plaintiff; *Comyns* for Defendant.

Westall *against* Finch.

DEFENDANT moved to stay the Proceedings, the Process not having been served upon him, but upon another Person, and obtained a Rule to shew Cause. Upon shewing Cause, it was insisted by Plaintiff, that although the Process might be served upon a wrong Person, yet an Appearance being now entered, the Defendant was in Court, and the Mistake was cured: But *per Cur'*: The Appearance is entered by Plaintiff, according to the Statute, and by no Means cures the Mistake. Let the Rule be absolute. *Hawkins* for Defendant; *Wright* for Plaintiff.

Hilary 9 Geo. 2.

WRIGHT moved to stay Proceedings, no Attorney's Name being put to the Copy of the Process served upon Defendant; but the Motion was denied. Plaintiff is not in Fault, but the Attorney.

Bennet *against* Sampson. Easter 7 Geo. 2.

THE *Capias ad respondendum* was directed to the Sheriff (singular) of London, tested February 13. which was the Day after the End of last Hilary Term. *Umlin* moved to quash it, alledging Defendant hath no other Remedy to take Advantage thereof, because he cannot have *Oyer* of the Writ; nor will it appear upon the Record in Case of a Writ of Error. Court made a Rule to shew Cause, which was afterwards made absolute on hearing *Chapple* for Plaintiff. This Writ bearing Teste in Vacation, is void.

Blackall *against* Gould. Trinity 10 Geo. 2.

MOVED to stay Proceedings, because no Attorney's Name was set to the Writ. Denied. *Warnell against Revell*, and *Fawks against Jay*, Trin. 5. *Perkin against Baker*, Hil. 5 Geo. 2.

Byas and Wife and Goodflesh, *against* Lyell. Trinity 31 Geo. 2.

In transgr' super **P** Plaintiff had proceeded against Defendant in the *Casum*. Old Way, by *Pone* and Distress; and Defendant moved to stay Proceedings, suggesting the same to be contrary to the Method prescribed by the late Act of Parliament to prevent vexatious Arrests, 12 Geo. and 5 Geo. 2. and the Question was, Whether by these Statutes the old Method of Proceeding be taken away, and another Method instituted, or not? It was urged for Plaintiff, that before the Statute of *Marlbridge* no *Capias* lay; that the

antient Course of Proceeding was by Original, and where the Party was returned attached, no Process lay, but a *Distingas*, except in Trespass *vi & armis*. In this Case the Party is returned attached upon the Original, and no Process to Outlawry lies: The Act of Parliament 12 *Geo.* prescribes a Method in Cases where the Cause of Action is under 10 *l.* and Plaintiff proceeds by Way of Process against the Person: But here Plaintiffs do not proceed by Way of Process against the Person, and after the Original returned as aforesaid, no Process against the Person can issue, and consequently the Party cannot be served with Process. There is also an Exception in the Statute 12 *Geo.* as to Peers and privileged Persons, who are to be proceeded against as by Stat. 12 *W.* 3. but that can relate only to Cases where the Proceeding is by Way of Process against the Person, and not by Method of *Pone* and Distress, which is a dilatory Method in Defendant's Favour, where Essoins may be cast, and remains as it was, not affected by any of these Statutes. *Per Cur'*: The Statute of *Marlbridge* and 25 *Ed.* 3. do not take away the antient Method of Proceeding by Original and *Distingas*; but where it is returned upon the Original, that Defendant hath nothing whereby he can be attached, a *Capias* against the Person may be issued, and a Proceeding to Outlawry carried on. The Words of the Statute 12 *Geo.* extend only to Proceedings by Way of Process against the Person, and seem to admit Plaintiffs may proceed otherwise, as before; and it would be hard to say this Clause hath repealed the Law by Implication. As to Proceedings against privileged Persons, a new Method by Bill is prescribed by the Statute of 12 *W.* 3. but the Law not altered. Let the Rule to shew Cause why the Proceedings should not be stayed be enlarged. *Corbet* for Defendant; *Draper* for Plaintiff.

Humphreys against Mitchell.

PROCESS was served *June* 16. dated 26. Held to be irregular, and Proceedings stayed. *Comyns* for Defendant; *Hussy* for Plaintiff.

Williams *against* Faulkner. Trinity 10 Geo. 2.

Defendant had obtained a Rule for Plaintiff to shew Cause why the Writ of *Capias ad respondendum* should not be quashed, there not being fifteen Days between the Teste and Return thereof. The Rule was discharged. This being Matter of Error, and not of Irregularity. *Corbet* for Plaintiff; *Skinner* for Defendant.

Cromwell *against* Goodwin.

THE Notice subscribed to the Copy of the Process served, was directed to Plaintiff instead of Defendant; and the Notice of the Declaration left in the Office was without Date. Defendant moved to set aside Judgment and Inquiry; and, both Notices being faulty, Judgment and Inquiry were set aside. *Agar* for Defendant; *Wright* for Plaintiff.

Taylor *against* Nicholls. Mich. 10 Geo. 2.

THE Writ of *Capias ad respondendum* was returnable *tres Mich.* Teste *July 14*, in the ninth Year of the King, (instead of the tenth Year.) A Rule was made to shew Cause why Proceedings should not be stayed, which was afterwards made absolute, no Cause being shewn.

Byas and Wife, and Goodflesh, *against* Lyall. Mich.
11 Geo. 2.

THE Rule to shew Cause why Proceedings should not be stayed was discharged. *Draper* for Plaintiff; *Hayward* for Defendant. *Vide* this Case *Trin.* 10 Geo. 2.

Green *against* Upton.

THE Rule to transcribe the Record was served on Plaintiff in Error, and for want of transcribing a *Non-pros* was signed. Plaintiff in Error moved to set aside the *Non-pros*, insisting that the Rule to transcribe ought to have been served on *Forrest*, his known Attorney in the Cause, and not on Plaintiff himself; and obtained a Rule to shew Cause, which was discharged, the Court declaring the Service sufficient. Rules to transcribe are excepted out of the general Practice; Service thereof on the Party has been always held good. *Agar* for Plaintiff; *Parker* for Defendant.

Peter *against* Reignier, Administrator.

Plaintiff sued out a Special Original, Damages 50*L* and having served a Copy thereof, proceeded as if a *Capias ad respondendum* with Notice to appear had been served. Defendant moved to stay Proceedings, and obtained a Rule to shew Cause; before Cause shewn Plaintiff signed Judgment, which was set aside with Costs, and further Process staid. *Hayward* for Defendant; *Wynne* for Plaintiff.

Plaintiff might have proceeded by *Pone* and Distress, or taken a *Capias* on his Original, which he pleased; but Service of a Copy of the Original, in this Manner amounts to nothing more than Notice of the Debt. Process to be served according to the late Statute must be Process against the Person.

Haward, Attorney, *against* Denison. Trinity 11 &
12 Geo. 2.

THE Attachment of Privilege *Teste* 23d, returnable *January* 31. Defendant moved to quash the Writ for want of fifteen Days between the *Teste* and Return, and a Rule was made to shew Cause, which was afterwards made absolute, the Court considering the Attachment of Privilege in the Nature of an Original Writ. *Draper* for Defendant; *Skinner* for Plaintiff.

2. Whether

2. Whether this might not have been taken Advantage of by Plea in Abatement, or by Writ of Error.

Talbot *against* Odeham. Mich. 12 Geo. 2.

NOTICE of Declaration was sworn to be put under the Latch of Defendant's Door on *June* 15, 1738, but not what Time of the Day or Night, nor that the Person who left the Notice knocked or endeavoured to open the Door. It did not appear that the Notice came to the Hands of Defendant or any of his Family; but being left so openly, might be taken away by any Body. This Notice was held insufficient, and the Rule to shew, Cause why Judgment should not be set aside, was made absolute. *Prime* for Defendant; *Eyre* for Plaintiff.

* White *against* Washington.

C*apias* returnable *tres Mich.* Notice to appear *October* 20. without saying *next*. Writ dated *August* 22. not cured by Plaintiff's entering the Appearance, because the Notice to appear is defective. Defendant may apply any Time before Judgment. Many Blunders were made in the Copy of the *Capias*. Let Plaintiff's Attorney shew Cause why he should not pay Plaintiff and Defendant their Costs occasioned by his Mistakes. *Skinner* for Plaintiff; *Hayward* for Defendant.

Royfton *against* Reed.

RULE for *Ambrose*, late Sheriff of *Essex*, to shew Cause why he should not return several Writs of *Fi. Fa.* and *Venditioni exponas*. *Wynna* shewed for Cause, that all the Warrants on these Writs were granted to Special Bailiffs of Plaintiff's Nomination, and that Indemnities to the Sheriff were indorsed on all the Writs, and signed by Plaintiff and his Attorney. *Per Cur'*: The Rule must be absolute. The Indemnities are necessary, because Plaintiff may call for Returns, though Warrants were made to his own Bailiffs. *Eyre* and *Prime* for Plaintiff.

Laggett

Laggett *against* Watkins. Hil. 12 Geo. 2.

RULE to shew Cause why Proceedings should not be staid discharged with Costs. The Objection was, that no Attorney's Name was set to the Sheriff's Warrant as required by Act of Parliament; but *per Cur'*, the Warrant is not void, the Act of Parliament is directory only; the Sheriff is blameable, but the Party must not suffer for his Default. *Skinner* for Plaintiff; *Hussey* for Defendant.

Collins *against* Shapland and his Wife. Easter 12 Geo. 2.

HUSSEY for Defendant obtained a Rule to shew Cause why Judgment should not be set aside, the Wife having never been served with Process. On hearing *Draper* for Plaintiff the Rule was discharged, the Service of the Husband being held sufficient in lieu of Arrest, and no Affidavit of such Service Plaintiff was well warranted in entering Appearance for both Husband and Wife, they not having appeared in Time. Vide *Buncomb against Love and Wife*. Pasch. 8 Geo. 2. *ante* 406

Amery *against* Smith. Trinity 13 Geo. 2.

MOTION to stay Proceedings founded on a Defect in the Affidavit filed with the Filazer, by Virtue whereof Defendant's Appearance was entered by Plaintiff *secundum Statutum*, without producing any Affidavit of Defendant. The Deponent in Filazer's Affidavit swore that he served a Copy of the Writ annexed to his Affidavit, but said nothing about Notice; and the Notice subscribed to said Writ was not directed to Defendant as required *per Stat.* and Blanks were left for the Day and Year of Appearance. Rule absolute to stay Proceedings. *Draper* for Defendant; *Skinner* for Plaintiff.

Walker *against* Haryes, an Attorney, per Bill. Mich.
14 Geo. 2.

C *A. fa.* returnable at a general Return, viz. *Tres Mich.* and not a Day certain, as it ought to have been, was quashed, and Defendant ordered to be discharged by *Superfedeas* with Costs, Defendant consenting to bring no Action. *Per Cur'*: Defendant cannot take Advantage of this Matter by Writ of Error; and if he could, it would be unreasonable to keep him in Custody till the Determination thereof. *Willes* for Defendant; *Birch* for Plaintiff.

Dixon *against* Goodman.

W RIT of Inquiry of Damages was executed before one *Ewens*, verbally appointed by the Coroners of *Norwich*, to whom the Writ was directed. The Objection was, that this Appointment was insufficient, and ought to have been in Writing, under Hand and Seal. It appeared that Defendant's Attorney attended, challenged a Juryman, cross-examined Plaintiff's Witnesses, and did not make the Objection now insisted upon, till after Plaintiff had gone through his Evidence. The Court held the verbal Appointment no Authority; but the Objection is waived by making Defence. The Rule to shew Cause why the Inquiry should not be set aside, was discharged. *Urlin* for Defendant; *Prime* for Plaintiff.

Kerry *against* Cade.

P Laintiff appeared for Defendant as a Person of full Age, by Affidavit pursuant to the Statute, and proceeded to Judgment. Defendant brought a Writ of Error; and it being disclosed to Plaintiff that Defendant was an Infant, and intended to assign Nonage for Error in Fact, Plaintiff moved, and obtained a Rule for Defendant to shew Cause why the Appearance in Person should not be struck out, and why Defendant should not appear by Guardian, or in Default thereof, why Plaintiff should not do it for him. The Court thought Plaintiff's Application came

too late, and discharged the Rule. *Birch* for Plaintiff; *Draper* for Defendant.

Grice *against* Allen. Easter 14 Geo. 2.

Defendant objected, that the Name of the Plaintiff's Attorney was not set upon the Sheriff's Warrant, as required *per Stat.* 2 G. 2. for Regulation of Attornies, &c. and obtained a Rule to shew Cause why Proceedings should not be stayed. Upon shewing Cause it appeared, that the Attorney's Name was put on the Writ, though not on the Warrant; and by *Stat.* 12 George 2, the Law is altered with respect to the Warrant, though not as to the Writ. The Sheriff, under the later Act, is required to set the Attorney's Name upon the Warrant under a Penalty of 5*l.* and if it be omitted, the Penalty may be sued for. The Warrant is the Sheriff's Act, and not the Party's. The Plaintiff's Proceedings ought not to be stayed by Reason of this, the Sheriff's Omission; but Defendant may take his Remedy for the Penalty. The Rule was discharged. *Draper* for Defendant; *Umlin* for Plaintiff. *Per Cur'*: The Practice of this Court in some Instances has been found to be wrong, and must be exploded. Where an Act of Parliament requires a Thing to be done generally, (without requiring it to be done by any Officer, &c. under a Penalty) and doth not say that for Want of the Thing required a Writ, &c. shall be void, it has been said, that such Act is directory only, and not making the Writ, &c. void. Proceedings ought not to be stayed; but if a Thing required by Rule of Court be omitted, it is constantly held to be irregular, and Proceedings are stayed: And surely an Act of Parliament should have as great Force, at least, as a Rule of Court. It has been held, that a Rule to bring a Prisoner into Court upon the Lords Act, ought to be personally served on the Creditor, which is often impracticable, and no such Thing is required by the Act. It has been the Practice, on Complaints against Sheriffs Officers, &c. for Extortion contrary to the Statute-2 Geo. 2. to grant a Rule to shew Cause why an Attachment on the first Application; the Rule ought to be to answer the Matters contained in the Petition and Affidavits.

Langley *against* The Bailiffs and Burgeses of East-Redford. Hilary 15 Geo. 2.

Defendants were sued in their Corporate Capacity by common *Capias ad respondend'*, and upon Affidavit of Service, an Appearance was entered by Plaintiff *secundum Stat'*; and Plaintiff entered Declaration in the Office, reciting, that Defendants were attached to answer, (which cannot be.) Defendants moved to set aside the *Capias* and Proceedings thereon; objecting, they ought to be sued by *Pone* and *Distingas*. And the Court were of Opinion, that as Defendants are sued in a Corporate Capacity, the *Capias ad respondend'* is null and void; and the Rule to shew Cause was made absolute. It was agreed, that had Defendants themselves appeared, the Objection had been waived. *Boote* for Defendants; *Skinner* for Plaintiff.

Chapman *against* Ryall and others. Trinity 16 Geo. 2.

AFTER Appearance entered by Plaintiff on Affidavit of Service of Process, Motion by Defendants to stay Proceedings, no Attorney's Name being set upon the Copy of the Process served on *Child*, one of the Defendants, as required *per Stat. 12 George*, and Rule to shew Cause was made absolute. *Per Cur'*: The Statute is compulsory, and for Defects in Notices to appear subscribed to Copies of Process served, nothing is more frequent than to stay the Proceedings; and where the Defect is in the Copy of the Process, the Reason is the same. Though the Writ itself be right, yet the Copy served is defective, and Proceedings must be stayed. There is nothing in *Stat. 5 Geo. 2. cap. 22. sect 5. Stat. 12 Geo. 2. cap. 23. sect. 22.* or any other subsequent Statute, whereby the Statute *12 Geo.* is altered or repealed in this Particular. *Prime* for Defendant; *Agar* for Plaintiff.

Foot *against* Hume. Hilary 16 Geo. 2.

THE Process was served on the Return Day at ———, at five o'Clock in the Afternoon, with Notice to appear that Day, which was the Return Day, 20th *January*, on which Day the Proclamation

mation for Effoigns had been made, and the Judge was gone out of Court before Noon; so the Return was expired. — moved, and obtained a Rule to shew Cause why Proceedings should not be stayed; which was made absolute on Affidavit of Service, no Cause being shewn. The Court declared, That Defendant ought to have a reasonable Time to appear after Service, which is the plain Intention of the Act of Parliament directing the Notice; and that the Notice ought to be served before the Return Day.

Marquand *against* The Mayor and Burgeffes of the Borough of Boston in Com' Lincoln'. Easter 16 Geo. 2.

SPECIAL Original sued out in *Com' Lincoln'*, and Defendants appeared. Plaintiff declared in *Com' Middlesex*; Defendants appeared; refusing to accept the Declaration, it was left in the Prothonotary's Office, and taken out and paid for by Defendant's Agent. Plaintiff sued out a new Original in *Middlesex*. The Court held the Taking the Declaration out of the Office to be a Waiver of the former Proceedings, and discharged the Rule to shew Cause why Proceedings in *Middlesex* should not be stayed. Note; An Effoign had been cast and adjourned before Defendant's Appearance; but the Court did not hold that material.

Gentleman *against* Bright. Mich. 17 Geo. 2.

RULE for the Bailiff of the Dutchy of *Lancaster* to return the Sheriff's Mandate on a *Fi. fa.* discharged, the Warrant having been directed to Officers of Plaintiff's Nomination, and at his Peril, and not to the Officers of the Bailiff of the Dutchy. *Prime* for the Bailiff; *Skinner* for Plaintiff.

Mallom *against* Gent.

RULE to shew Cause why a Writ of *Non omittas Capias ad respondend'* should not be quashed, discharged. The Objection to the Writ was, that it recited a Mandate to have been issued forth by the Sheriff to the Bailiff of a Liberty, without naming what

What Liberty, but leaving a Blank for the same. The Court held the Objection to be valid, and that the proper Way to take Advantage of the Defect is by Motion; but it appearing that Bail was put in to this Writ before a Judge, the Objection now comes too late. *Skinner* for Plaintiff; *Prime* for Defendant.

Wright *against* Obeden.

Defendant was protected by Baron *Hoffman*, a publick Minister, and the Protection was registered in the Sheriff's Office, according to the Act of Parliament. A *Capias ad respondendū* was delivered to the Sheriff of *Dorsetshire*, who durst not execute it, by Reason of the Protection, and the Penalty in the Act. Plaintiff served the Sheriff with a Treasury Rule to return the Writ, which Rule was discharged by the Court. *Eyre* for Plaintiff; *Draper* for the Sheriff.

Ogier, *Qui tam*, &c. *against* Hayward. Trinity 19.
& 20 Geo. 2.

COPY of Original served, with Notice to appear (as Process to arrest) irregularly. After Plaintiff's Attorney discovered his Mistake, he applied to the Curfitor, who altered the Return of the Original from *Ostabis Hilarii* to *Ostabis Purificationis*, and resealed it; then Defendant was summoned by the Sheriff, and being returned summoned on the Original, and not appearing, a *Pone* issued. Upon Application to stay Proceedings, the Court made a Rule to shew Cause; but before they determined the Question, thought a Motion should be first made in Chancery, which was done; and Lord Chancellor, on hearing Counsel on both Sides, ordered the Original Writ to be superseded *quia improvide emanavit*, with Costs; because having been once executed (by Service of a Copy, with Notice to appear) though improperly, it could never afterwards be made use of for any other Purpose. Rule made absolute to stay Proceedings, without Costs. Several Curfitors attended the Court, but did not agree; they reported the Practice differently. *Skinner* and *Boote* for Defendant; *Prime*, *Willes*, *Draper* and *Leeds* for Plaintiff.

Mason *against* Obrien, Esquire, Earl of Inchiquin in the Kingdom of Ireland, having Privilege of Parliament. Mich. 20 Geo. 2.

SUMMONS returnable *Tres Mich. Diffringas* returnable 31st October, *Alias Diffringas* returnable 7th November, 40s. Issues returned. *Bootle*, for Plaintiff, moved to increase Issues on the *Pluries Diffringas* to a good Sum, producing an Affidavit that the Debt was 152*l*. The Practice here has hitherto been to double the Issues returned from Time to Time, and not farther to increase the same; but the Courts of King's Bench and Exchequer having done more, this Court, conformable to the Practice of the other Courts, ordered Issues to be returned on the *Pluries Diffringas* to 20*l*.

Gladman *against* Bateman.

COMMON *Copias* served on Defendant, an Infant, with Notice to appear by his Attorney, in the Form prescribed by the Statute; Defendant appeared by his Attorney, and insisted, that having appeared agreeable to the Notice served, he had done all that could be required of him, and refused to appear by Guardian. Plaintiff moved, according to the Course of the Court, for a Rule, That unless Defendant should appear by Guardian within four Days, Plaintiff might have Leave to name a Guardian for him, to appear and defend this Action. Defendant opposed the Motion, and his Counsel argued, That the Statutes 12 Geo. 2. c. 29. and 15 Geo. 2. c. 27. relating to Service of Process, did not extend to Infants, nor to all Actions notailable, but only to Actions of Debt and on simple Contracts; and that the Plaintiff's Cause of Action being for an Assault, was out of the Statutes, and Defendant should have been arrested, as before the Statutes. The Court made the Rule as prayed by Plaintiff, which is the constant Practice after an Appearance by Attorney, where Defendant is an Infant. The Form prescribed by the Statutes cannot be altered. No Notice is taken of the Party's being an Infant, or not in the first Proceeding. Infancy is to be pleaded. Rule the same now as before the Acts to appear by Guardian; because the Appearance by Attorney would be Error
after

after a Verdict. If otherwise, no Action could be brought against an Infant. If this Question had been made recently, soon after the Statutes, it might have been doubtful whether they extended to all Causes of Action not bailable, or not; but all the Courts, ever since the Acts, have taken them so to do, and Custom and Practice must prevail. The General Rule is, that a defective Appearance must be set right. *Skinner* for Plaintiff; *Agar* for Defendant.

Wingfield *against* Beard, alias Farmer. Trinity 21

Geo. 2. *March 2 1742*

COPY of Process served in *June*, with Notice to appear at the Return, being the 15th Day of *June*, without inserting the Word (*next*;) or the Year (1747.) Rule absolute to stay Proceedings. *Prime* for Defendant; *Willes* for Plaintiff.

Valentine *against* Hawkins. Easter 21 Geo. 2.

CURRER, the Father, Plaintiff's Attorney, in Favour of his Son, *Currer* junior, Filazer of *Suffolk*, and in Prejudice of the Filazer of the County of *Kent*, though Plaintiff and Defendant both dwelt in *Kent*, where the Cause of Action arose, and had never any Dealings together in *Suffolk*, sued a *Testat' Ca'* from *Suffolk* into *Kent*, out of his Son's Office, in the Name of one *Mulliner*, an Attorney, instead of a *Capias* in *Kent* from the proper Filazer. The Court held this to be unwarrantable and irregular, and set aside the Proceedings, with Costs, to be paid by *Currer* senior, to both Parties. *C. Valentine*, a Bailiff, complained of by Defendant, denied the Charge; and as to him the Rule to shew Cause why an Attachment, was discharged. *Skinner* and *Poole* for Plaintiff and the two *Currers*; *Prime* and *Draper* for Defendant; *Wynne* for *C. Valentine* the Bailiff.

Green *against* Littleton, Esquire. Trinity 21 & 22
Geo. 2.

PLaintiff's Debt appeared by Affidavit to be 230*l.* eighty Shillings Issues had been returned on the *Alias Distingas.* Rule that the Sheriff of *Middlesex* should return 20*l.* Issues on the *Pluries Distingas.* *Draper* for Plaintiff.

Ridley *against* Wilson.

DATE of the Writ omitted.; Penalty for the Omission 10*l.* on the Officer, *per Stat. Will. 3.* Rule to stay Proceedings made absolute. *Pools* for Defendant; *Skinner* for Plaintiff.

Wortley, Esquire, *against* Pitt, Esquire. Mich. 22
Geo. 2.

PLaintiff's Debt appeared by Affidavit to be 1950*l.* Forty Shillings Issues had been returned on the first *Distingas.* Rule that the Sheriff of *Middlesex* should return 20*l.* Issues on the *Alias Distingas.* *Bootle* for Plaintiff.

Holt junior *against* Hawkes. Trinity 22 & 23 Geo. 2.

THE *Capias ad respondend'* was made returnable before the King's Justice, instead of Justices, at *Westminster*; and there were six Days only, instead of fifteen, between the *Teste* and Returns. Proceedings stayed, with Costs.

Wortley

Wortley, Esquire, *against* Pitt, Esquire.

BOOTLE, for Plaintiff, moved to increase the Issues on *Pluries Distingas*, (Debt sworn to be 2000*l.* and upwards), last Issues 20*l.* now five Times as much (the usual Way here) 100*l.*

Wortley, Esquire, *against* Pitt, Esquire. Mich. 23
Geo. 2.

ON *Pluries Distingas* Issues increased from 100*l.* to 500*l.*
Bootle for Plaintiff.

Highmore *against* Barlow, in Ejectment. Trinity 24
Geo. 2.

RULE to shew Cause why the Time for returning a *Certiorari* to the Mayor's Court of London should not be enlarged, and the *Certiorari* quashed. The Practice appearing to be, that in Ejectment a Writ of *Habeas Corpus* is the proper Process to remove the Plaintiff (under which the Defendant must appear in this Court, and enter into the Common Rule, and Plaintiff must declare *de novo*) and not a Writ of *Certiorari*, as in Replevin, whereby, after the Record removed, the Parties are to proceed upon it, and not to begin *de novo*. Fitz. Nat. Brev. 557. Letter L. Rule absolute to quash *Certiorari*, *Habeas Corpus* to be taken out. Poole for the Mayor, &c. Bootle for Plaintiff.

Philmore and others *against* Sir William Stanhope.

THE Debt sworn to be 200*l.* and upwards. On the *Alias Distingas* 4*l.* Issues were returned. The Court ordered, that on the *Pluries Distingas*, the Sheriff should return Issues to 20*l.* Draper for Plaintiff.

Boswell *against* Roberts. Trinity 24 Geo. 2.

Objections, That no Writ was sued out, and that the Copy of a pretended Writ was delivered to Defendant, inclosed in a Letter. But it appearing, that the Writ had been signed by the Filazer before served, and the Delivery of the Copy made Service by Defendant's opening the Cover and taking out the Copy; there being no Occasion to shew the Original Writ at the Time of Service. The Rule to shew Cause why Proceedings should not be stayed was discharged. *Prime* for Plaintiff; *Poole* for Defendant,

Philmore and others *against* Sir William Stanhope.
Mich. 24 Geo. 2.

THE Issues returned on the *Pluries Disstringas* were 20*l.* Rule that the Sheriff shall return 100*l.* Issues on the next *Disstringas*. Debt sworn 290*l.* and upwards. *Draper* for Plaintiffs.

Bax *against* Culmer. Hilary 24 Geo. 2.

RULE absolute to stay Proceedings on Process directed to the Sheriff of *Kent*, served at *Hastings* within the *Cinque Ports*; the Sheriff of *Kent* has no Jurisdiction within the *Cinque Ports*, the Writ should have been a *Testatum Capias* directed to the Constable of *Dover Castle*. *Prime* for Defendant; *Poole* for Plaintiff.

Botter *against* Colsworthy. Trinity 25 & 26 Geo. 2.

Treasury Rule for the late Sheriff of *Devonshire* to return a Writ of *Capias ad respondendum* discharged. *Terry*, late Under-Sheriff (as usual in *Devonshire*) had intrusted Plaintiff's Attorney with blank Warrants, to be directed to bound Bailiffs only; and he had filled up a Warrant on this Writ; and directed and delivered it to a bound Bailiff, pursuant to his Trust. But it appearing that

this Writ, though returnable in *Easter Term* 1751, was not carried to the Sheriff's Office, or tendered to the Under-Sheriff, till *April* 1752, the Court thought it unreasonable to oblige the Sheriff to make a Return. *Prime* for the late Sheriff; *Poole* for Plaintiff.

Dixon, one, &c. against Atkinson. *Easter* 26 *Geo.* 2.

POOLE, for Plaintiff, obtained a Rule to shew Cause why Plaintiff should not have Leave to take out a separate Attachment of Privilege, to warrant his Judgment against this Defendant only, *nunc pro tunc*, agreeable to a joint Attachment of Privilege against Defendant and others, returnable in *Hilary* 23 *Geo.* 2. where, with Defendant having been served, and not appearing, Plaintiff had appeared for him, according to the Statute; and after Judgment, Defendant had brought a Writ of Error. *Willes*, for Defendant, shewed Cause; insisting, That an Attachment of Privilege is always considered as an Original Writ, is amendable only in Point of Form, by the Instructions given for it: That Plaintiff purchased a joint, and not a separate Writ, originally by his own Election; and that the Court of Chancery where an Original is bad, will not grant a good Original; though in some Cases that Court will order an Original where one was sued out before. Quoted *Chase* against *Sir John Ethridge*, 2 *Vent.* 130. *Maffingburn* against *Durrant*, 2 *Vent.* 49. *Poole*, for Plaintiff, urged, That as Plaintiff has obtained a regular Judgment for a just Debt, unimpeached, it is reasonable for the Court to interpose, in Cases of Common Process, after Judgment by Default, Plaintiff sues a Special Original to warrant it. That Attachments of Privilege are not always considered as Original Writs, appears by General Rule, *Hilary* 11 *Geo.* 2. whereby four Defendants Names (and no more) may be put into one and the same Attachment. The Court were of Opinion, That an Attachment of Privilege is, strictly, neither an Original Writ, nor a *Capias*; it answers the Purposes of both; it warrants the Proceedings, as well as brings the Party into Court. The Rule *Hilary* 11 *Geo.* 2. must have considered an Attachment of Privilege as *mesne* Process. There is no Precedent of a new Attachment to warrant a Judgment. If Defendant had appeared, the Court probably would have ordered a new Attachment (if necessary); but by the Appearance entered according to the Statute, nothing is helped or admitted. By the

Practice of this Court, the old Joint-Attachment seems to be good, and sufficient to warrant Proceedings thereon against Defendants severally, as will be reported to the Court of King's Bench, if they desire to be informed what is the Practice here. The Rule discharged.

Hand, one, &c. *against* Grosvenor, one, &c, Plaintiff
and Defendant both Attornies of this Court.

RULE to shew Cause why Proceedings by *Capias* should not be set aside; Defendant objecting that he ought to have been sued by Bill: But Defendant having appeared to the *Capias* before the Motion, has cured the Mistake. He may plead his Privilege, The Rule discharged.

Hanbury and Wife *against* Cowper, one, &c. by Bill,
Mich. 29 Geo. 2.

RULE absolute to set aside a *Fieri facias*, and the Execution thereof, without Costs; the Writ was irregular in two Particulars; First, in the Return, which was general 15 *Martin*' instead of a Day certain, and Secondly, it commanded the Sheriff to have the Money when levied at the Return in Court, to be rendered to Plaintiff the Husband only, and not to the Husband and Wife, though both were Plaintiffs. Plaintiffs produced a Judgment by Confession to warrant the *Fieri facias*, but it was faulty, the Recovery being by the Plaintiff the Husband only. The Court ordered the Judgment to be rectified agreeable to Defendant's Confession; and that Defendant should bring no Action. *Prime* for Defendant; *Poole* for Plaintiffs.

Ashley the Younger *against* Mackarley and another,
Hilary 29 Geo. 2.

COPY of Process served on the Return Day at 3 o'Clock in the Afternoon. Rule absolute to stay Proceedings. *Vide Foot* against *Hume*, Hil. 16 Geo. 2. Vol. 2. p. 330. *Davy* for Defendants; *Prime* for Plaintiff.

Price *against* Schömberg. Trinity 29 & 30 Geo. 2.

THE Sheriffs of London returned on a *Capias ad satisfaciendum*, That Defendant's Name was registered in the Secretary of State's Office, as a Domestick of Count *Haslang* a foreign Minister, and transmitted to them, and set up in their Office. Rule to shew Cause why Sheriffs should not make a better Return discharged, the Sheriff's Office is not beneficial but expensive, they should not be driven into Difficulties, they granted a Warrant; but no Officer durst execute it. If Defendant be a Domestic, the Process is void *per* Statute 7 Ann, and Lord Chancellor, and the two Chief Justices have Power to inflict corporal Punishment. The Sheriffs stand by their Return, if it be insufficient Plaintiff may apply next Term for an Attachment, *Davy* for the Sheriffs; *Hewitt* for Plaintiff.

Elliot *against* Parrot. Hilary 31 Geo. 2.

THE *Capias ad respondendum* was returnable from the Day of the *Holy Trinity*, in 3 Weeks, and on the Copy served was a Notice subscribed to appear at the Return, being the 26th of *June*, without saying *Instant, next*, or 1757, which the Court now held to be sufficient, exploding the former Doctrine on this Subject. 'Tis incumbent on Defendant to appear at the Return, which must according to the Notice be the 26th *June* in *Trinity* Term, 1757, as appears from the *Teste*, and the Date of the Writ. Rule to shew Cause why Proceedings should not be stayed, discharged. The Writ bore *Teste* 23d *May*, and was dated 4th *June*. The Copy with Notice was served 7th *June*, 1757. *Poole* for Plaintiff; *Prime* for Defendant.

Duggin *against* The Earl of Peterborough. Trinity 32 & 33 Geo. 2.

THE Writ of Enquiry of Damages concluded thus, (*viz.*) Witness Sir *John Willes*, Knight, at *Westminster*, and there stopped, adding neither Day nor Year, after this Writ executed without

without any Defence made, on Defendant's Application, a Rule was made to shew Cause why it should not be set aside, and on Plaintiff's Application a Rule to shew Cause why it should not be amended by adding a Day and Year, upon hearing Counsel on both Sides, the Court discharged both Rules. (Very probably the Writ may be sufficient as it stands.)

Cooper *against* Sherbrooke, Esq; and Mead in Replevin. Easter 33 Geo. 2.

RULE to shew Cause why Inquisition on Writ of Inquiry of Damages, final Judgment, and *Fi. fa.* should not be set aside. The Distress was made for a Rent Charge after *Re' fa lo'* returned and filed, and Rule to declare given, Judgment *de Retorn' habend'* was signed for want of a Declaration, and Writ of *Retorn' habend'* issued 12th July, 1759, but never executed. Second of October Plaintiff sued out a Writ of second Deliverance, (which Writ is given by Statute *Westminster 2, 13 Ed. 1.*) Defendant did not proceed on the Writ of *Retorn' habend'*; but entered a Suggestion on Record according to Statute 17 *Cha. 2. S. 2.* and 27th October, gave Notice of the Execution of a Writ of Inquiry of Damages, Defendants not having then had any Notice of the Writ of second Deliverance, though before the Execution of the Writ of Inquiry they had Notice of it. Defendants were Trustees for the Wife of *John Wilkes, Esq;* It was on Plaintiff's Part urged that the second Deliverance removes the Judgment of *Retorn' habend'*, and opens the Cause again, that if the *Retorn' habend'* be not executed, the second Deliverance supercedes it, if executed it brings back the Distress. That after the Merits tried under the second Deliverance, the Distress will be irreplevifable. On Writ of *Retorn' habend'* awarded Writ of second Deliverance is given the Party to reinstate him. That the Defendants cannot enter a Suggestion, but whilst the Judgment of *Retorn' habend'* (which is a Non-suit) subsists. But the Court thought otherwise, they held that a Writ of second Deliverance (which is not taken away by Statute 11 *Geo. 2.*) is no *Superfedeas* to the Writ of Inquiry of Damages. If Defendants had proceeded on the Writ of *Retorn' habend'*, Court would have stopped them; but they have made their Option to proceed under the Statute *Cha. 2.* which they had a Right to do. This Statute and former Statute were intended

to prevent Delay, and give the Party a better Remedy. Statute 21 H. 8. C. 19. gives Damages in Compensation of Trouble and Expence, 22 H. 8. C. 15. gives Costs where a Non-suit. Old Statute mentions Writ of second Deliverance, new Statute does not. *Baker* against *Lane*, *Carthew* 253. *Err'*. *Palmer* 403. *Latch.* 72. *Hilman* against *Taylor*. *Trinity* 13 & 14 *George* 2d. In *Communi Banca*, Rule discharged. *Whitaker* and *Nares* for Defendants; *Hewitt* and *Davy* for Plaintiff. If this Construction was not put on Statute *Cha.* 2. it would be totally nugatory. †

Atkinson against Taylor.

C*apias ad respondendum* returnable on the Morrow of the Purification of the blessed *Mary*, bore *Test* 23d *January*, 33 *Geo.* 2. The Rule made absolute to set aside the Proceedings as irregular for want of 15 Days between the *Teste* and Return without Costs. The Court would not turn the Defendant round to his Writ of Error. *Nares*; for Defendant; *Davy* for the Plaintiff.

Prohibition..

Eaglesfield against *Anderson*. *Trinity* 7 & 8 *Geo.* 2.

Defendant came to shew Cause why a Prohibition should not be granted; and objected that no Affidavit was filed, whereby the Libel whereupon Plaintiff had moved, appeared to be a true Copy. *Per Cur'*: The Objection is good. Rule discharged. *Wright* for Defendant; *Umlin* for Plaintiff.

Pitt against Evans. Mich. 12 Geo. 2.

RULE for Civilians to be heard on both Sides, in Relation to a Prohibition. Dr. *Lee* attended to argue against the Prohibition; but none would attend to argue for it, as by Affidavit appeared. *Per Cur'*: We ought to hear Civilians on both Sides, or not at all. Enlarge the Rule, perhaps when our Opinion is known, a Doctor may attend on the other Side: Afterwards, no Civilian attending to argue for the Prohibition, Dr. *Lee* could not be heard against it.

Maltom against Acklom, in Prohibition. Hilary 20.
Geo. 2.

Plaintiff had obtained a Rule to shew Cause why a Writ of Consultation should not be granted, for Want of Plaintiff's proving his Suggestion by two Witnesses within six Months, as required by the Statute; and why Plaintiff should not pay double Costs. Upon Cause shewn it appeared, that the Declaration had been, by Rule, ordered to be made agreeable to the Proceedings in the Spiritual Court, and thereupon a Prohibition to issue. And the Court being of Opinion that the Time for proving the Suggestion ought to be computed from the Time of the Amendment, and not further back. The six Months were not expired, and the Rule was discharged. *Bootle* for Defendant; *Agar* for Plaintiff.

Reference.

Corrance against Newfom, Crisp and Smith. Mich.
12 Geo. 2.

MOTION *per Prime* to make Rule, *Nisi prius* Rule of Court to refer to Prothonotary *Thompson* to ascertain Damages. Denied as improper.

Replevin.

Replevin.

Davis *against* Prince, in Replevin. Trinity 26 & 27
Geo. 2.

RULE absolute to stay Proceedings, on Payment of 47 l. Rent distrained for, and Costs, after Declaration, but before Answer. *Willes* for Plaintiff; *Prime* for Defendant.

Rescous.

Talker *against* Geale. Hilary 6 Geo. 2.

Defendant was brought into Court by *Habeas Corpus* directed to the Sheriff of *Kent*, and upon the Return thereof it appeared that Defendant was detained by a Writ of *Rescous* which had been issued by the Filazer, founded on a *Rescous* returned by the Sheriff on a Writ of *Capias ad respondendum* between the Parties, in which Writ of *Rescous* was contained an *Al' Cap'* against the Defendant to answer the Plaintiff according to the Tenor of the first *Cap'*. Motion was made to discharge Defendant, the Writ of *Rescous* being complex, *i. e.* to answer the King for a Contempt, and to answer *Talker* in a Civil Action. The Court denied to make any Rule, the Writ of *Rescous* being in the common Form. *Vide Officina Brevium*, Title *Rescous*, fol. 194.

Rex *contra* Philips and others. Easter 6 Geo. 2.

A *Rescous* was returned by the Sheriff of *Essex*, and an Attachment being issued and Defendants taken thereupon, Defendants entered into Recognizances for their Appearance to be examined upon Interrogatories. The Court were of Opinion that a *Rescous* returned by the Sheriff is not a Matter traversable, but amounts

amounts to a Conviction, and the Party taken upon an Attachment founded upon a *Rescous* returned is not proper to enter into Recognizance to be examined upon Interrogatories, such Attachment being in the Nature of a *Capias pro Fine* to bring the Party into Court to be fined, and therefore discharged the Recognizance as irregularly taken.

Rex contra Baldwin and others.

EYRE moved to quash the Return of a *Rescous* upon a *Fi. Fa.* as a bad Return. Rule to shew Cause. The Sheriff in this Case may raise the *Posse Com'*, and therefore cannot return a *Rescous*.

The King against Tyrell and others. Trinity 6 & 7
Geo. 2.

AN Attachment having issued against Defendants upon a *Rescous* returned, *Eyre* moved that they might submit to a small Fine. *Car'* ordered the Fine to be suspended till after the Trial of an Action to be brought against the Sheriff for a false Return, and in the mean Time permitted Defendants to enter into Recognizances with Sureties.

The King against Tyrell and others. Easter 7
Geo. 2.

THE Sheriff had returned a *Rescous* against Defendants, who had thereupon entered into the usual Recognizance, and brought an Action against the Sheriff for a false Return, and obtained a Verdict. *Eyre* moved that the Recognizance might be discharged, which was granted upon producing the *Posse*.

Scire Facias.

Newarke *against* Newarke. Trinity 7 & 8 Geo. 2.

UPON hearing Counsel on both Sides, the Court determined that in a *Sci. Fa.* to revive a Judgment it is not necessary to insert the particular Term wherein Judgment was recovered; the *King's Bench* Form is *Nuper recuperavit*, and the Precedents are both Ways in this Court. It is the same in Point of Law in both Courts, *Certum est quod certum reddi potest*. Upon *Nul tiel Record* it may be made certain by the Record. *Eyre* for Plaintiff; *Darnal* for Defendant.

Poole *against* Broadfield. Mich. 8 Geo. 2.

SCI. Fa. ordered to be quashed on Plaintiff's Motion without Costs before Plea pleaded, although Defendant had entered an Appearance. *Chapple* for Plaintiff; *Eyre* for Defendant.

Matravers the Younger *against* Adlam and Browne.
Trinity 10 & 11 Geo. 2.

SCI. Fa. on Recognizance of Bail. *Belfield* demurred to the *Sci. Fa.* and on the Argument objected that it doth not contain any positive Averment that Plaintiff recovered Judgment against the Principal; it is expressed only, that although Plaintiff recovered Judgment, yet Defendant did not pay the Condemnation-Money, or render his Body to Prison, &c. He objected also, that the Recognizance is in an Action at the Suit of *John Matravers*, and the Judgment recovered is by *John Matravers* the Younger, and it cannot be intended that *John Matravers* and *John Matravers* the Younger are one and the same Person. *Eyre* answered, that the *Sci. Fa.* is in common Form, the Recovery of Judgment is sufficiently averred, and as to the Identity of the Person, it is set forth by *Sci. Fa.* after reciting the Recognizance, that although the said *John Matravers* by the Name of *John Matravers* the Younger recovered Judgment, &c. The Court gave Judgment for the Plaintiff.

Wright

Wright *against* Treweeke. Mich. 20 Geo. 2.

RULE to shew Cause why Proceedings on a *Scire facias quare Executio non*, brought by *Spincke*, Executor of the deceased Plaintiff, pending a Writ of Error, should not be stayed. On shewing Cause it appeared; That the Record of the Judgment was not transcribed into the *King's Bench*; and the *Scire facias* out of this Court was held to be regular. The Executor may revive, but cannot take out Execution pending the Writ of Error. After a Transcript, the *Scire facias quare Executio non* should go out of the Court of *King's Bench*. Plaintiff in Error, if desirous to proceed, might (after a Transcript) have a *Scire facias ad audiend' Errores* out of the *King's Bench* against the Executor or Administrator of the Defendant in Error. The Rule discharged. *Bootle* for Plaintiff's Executor; *Willes* for Defendant.

Soldiers.

Bowler *against* Owen. Mich. 6 Geo. 2.

Defendant was an Out-Pensioner of *Chelsea* College, and the Question was, Whether or no he was intitled to the Benefit of the Act of Parliament as a Soldier in his Majesty's Service. The Court held he was not, being under no military Discipline, and subject only to the Control of the Commissioners.

Nichols and others *against* Wilder. Easter 6 Geo. 2.

Plaintiff brought an Action against Defendant, who was a Soldier, for a Debt under 10*l.* and recovered Judgment for 14*l.* 10*s.* Damages and Costs, and afterwards brought an Action of Debt upon the Judgment, and held Defendant to Bail, who moved to be discharged upon a common Appearance, being a Soldier, and the Debt for which he was originally sued being
under

under 10*l*. The Court were of Opinion that the Debt which they were to consider was the Sum recovered by the Judgment, and that Defendant must be held to Bail. The same Point was determined upon Consideration, and looking into the Soldiers Act in *Hil. 5 Geo. 2. inter Bilson and Smith.*

Savage against Monk. Trinity 11 & 12 Geo. 2.

Defendant, a Soldier in the King's Service, was arrested and held to Bail in an Action of Debt upon a Judgment, and moved to set aside the Bail-bond, the original Debt being only 3*l*. 3*s*. though the Damages and Costs recovered did amount to more than 10*l*. The Court considered the Words of the Clause in Favour of Soldiers in the last and other Acts for punishing Mutiny, &c. and were of Opinion that the original Sum due in this Action is the Sum recovered by the Judgment. A Debt on Judgment cannot be considered as a Debt of a less Nature than a simple Contract, and the Rule to shew Cause why the Bail-bond should not be set aside was discharged. *Eyre* for Defendant; *Parker* for Plaintiff.

Flanders against Nicholls.

Defendant, a Soldier in his Majesty's Service, was sued by Plaintiff in the *Marshal's Court* for a Debt of Three Pounds Seventeen Shillings and Four Pence, and after a Writ of Inquiry executed in that Court, the Costs were taxed at Seven Pounds Fourteen Shillings, and Plaintiff signed final Judgment for the Sum total, being Eleven Pounds Eleven Shillings and Four Pence. Defendant moved the Judge of the *Marshal's Court*, that no Execution might be issued against his Person, which upon hearing both Sides was ordered, and the Judge directed Defendant to apply for Costs, in case his Person should be taken in Execution. Plaintiff brought an Action in this Court upon the Judgment, and Defendant moved that the Bail-bond might be delivered up, on entering a Common Appearance, and obtained a Rule to shew Cause, and for Costs. The Court on shewing Cause were of Opinion, that though the Clauses in the former Acts of Parliament to prevent Soldiers being taken out of the King's Service have hitherto been defective, yet the Clause in

the last Act 13 Geo. 2. is sufficient, the original Debt being under Ten Pounds; and Plaintiff having proceeded to hold Defendant to Bail after he knew the Opinion of the Judge of the *Marshal's Court*, the Rule was made absolute *in omnibus*. *Agar* for Defendant; *Skinner* for Plaintiff.

Superfedeas.

Spincks against Bird. Easter 10 Geo. 2.

AFTER a Writ of Error abated by Death of late Chief Justice, Plaintiff with Leave of the Court sued out a *Ca. Sa.* and an Exigent *post. Ca. Sa.* and was proceeding thereon to Outlawry. Defendant brought a new Writ of Error, and had a *Superfedeas*. *Chapple* moved to discharge that Part of the *Superfedeas* which extended to stop the Proceeding to Outlawry, and obtained a Rule to shew Cause, which was discharged. The Outlawry is founded on the Execution, and the Writ of Error, which stays Execution, must stay the Outlawry, which is the Superstructure. It appears by the Precedents that the *Superfedeas* is in common Form, and the Words thereof (surcease putting in Exigent) are well inserted; the Writ of Error is a *Superfedeas* from the sealing, though no Contempt is incurred till after Notice of the Allowance. The Writ of Error being brought before the Exigent executed stays the Proceedings to Outlawry. *Parker* for Defendant.

See Title **Prisoners.**

Newball against James. Hilary 13 Geo. 2.

A Copy of the Declaration was delivered at the *Fleet*, Defendant being a Prisoner there, but was not indorsed for Bail by the Prothonotary or his Deputy pursuant to general Rule, *Hil. 8 George 2.* An Affidavit was filed, and the Declaration properly indorsed; but

but Plaintiff's Attorney left at the *Fleet* a Copy of the Declaration and Indorsement instead of the Original, which was held insufficient, and the Rule to shew Cause why a *Supersedeas* should not issue to discharge Defendant out of Custody upon entering common Appearance was made absolute. *Boots* for Plaintiff; *Droper* for Defendant.

Trials, Verdict, &c.

Makepeace *against* Stevens, and others; Verdict for Defendant, Hilary 6 Geo. 2.

AT the Assizes a Point was reserved, and referred to Lord Chief Justice *Lee*, then one of the Judges of the King's Bench, for his Opinion upon the Matter in Law, the Chief Justice desired the Opinion of the Court of Common Pleas, out of which the Cause issued; the Court were of Opinion for the Defendants, and ordered the *Posse* to be delivered to their Attorney.

Philips, *Qui tam*, *against* Scullard. Easter 6 Geo. 2.

AN Action brought for 50*l.* Penalty for selling Half a Pint of Cherry Brandy. The Fact was proved upon the Trial to be done by Defendant's Wife; but several Circumstances appeared to shew, that she was unwarily drawn in by false Pretences. Lord Chief Justice *Eyre*, who tried the Cause, directed the Jury to find for Plaintiff, but they found for Defendant contrary to Evidence. *Belfield* moved for a new Trial, and a Rule *Nisi causa* was granted, but was afterwards discharged upon shewing Cause; the Action being hard, and the Case having been represented to the Commissioners of Excise, who refused to direct a Prosecution.

Hemings *against* Robinson. Mich. 6 Geo. 2.

A Point was reserved at the Sittings of *Nisi Prius*, Whether the Proof of the Indorfor of a Promissory Note his Acknowledgment that the Name indorfed on said Note was his Hand-writing, be sufficient to prove the Indorsement in an Action brought by Plaintiff as Indorfee against Defendant as Drawer? The Objection was, That no Person's Confession but the Defendant's himself can be Evidence, and the Indorfor's Hand must be proved. The Objection was held good; and the Verdict, as to the second Promise in the Declaration, was ordered to be vacated.

Huddleston *against* Brigstock and others. Mich. 7 Geo. 2.

TWO Issues were joined between the Parties; and upon Trial both Issues were found for Plaintiff. Defendant moved for a new Trial; and Mr. Baron *Comyns*, before whom the Cause was tried, certified the Verdict as to one of the Issues, to be contrary to Evidence; but as to the other Issue, certified it to be right. The Court, upon hearing Counsel on both Sides, were of Opinion that the Verdict could not be severed, and being right in Part must stand. *Baynes* for Defendant; *Darnal* for Plaintiff.

Anonymus.

THIS Cause was tried the last *Gloucester* Assizes. Defendant moved for a new Trial; and Mr. Justice *Page* certified the Damages (which were 50 *l.*) to be excessive; but the Action appearing to be brought for a very malicious Prosecution; and Plaintiff having been imprisoned and tried for Felony, the Court were of Opinion that in the Nature of the Thing the Damages appeared to be moderate, and therefore refused to grant a new Trial.

Carter *against* Uppington.

A Third Person made Affidavit, that to his Knowledge *A. B.* was a material Witness for Defendant; and thereupon *Darnal* moved to put off the Trial; but the Court refused to make any Rule upon this Affidavit, because none but the Party himself can swear to any Person's being a material Witness.

Roberts *against* Downes, an Attorney. Easter
7 Geo. 2.

URLIN moved *Monday, May 13*, to put off a Trial which was to be the Day following. Court made a Rule to shew Cause; but declared that for the future such Motions ought to be made at least two Days before the Day of Trial. *May 14th*, Plaintiff came to shew Cause upon the Rule made the Day before, why the Trial should not be put off. Defendant had given Notice to set off a Debt, and the Witness sworn to be absent was material, as to that Matter only; the Court were of Opinion, that that being a collateral Defence, and as no Trial had been hitherto put off upon that Account, the Rule must be discharged. *Wright* for Plaintiff; *Umlin* for Defendant.

Gray *against* Halton.

RULE was made for Plaintiff to shew Cause why a Trial should not be put off upon the Affidavit of Defendant's Wife, that Defendant was gone to Sea; and *A. B.* a material Witness, as she believed, with him. Court, upon shewing Cause, discharged the Rule, the Affidavit not being sufficient. *Darnal* for Plaintiff; *Baynes* for Defendant.

Lord Hillsborough *against* Jefferyes, Esq; Trinity
7 & 8 Geo. 2.

THIS was an Action for a Criminal Conversation with Plaintiff's Wife, and the Damages were laid for 50,000*l*. Defendant moved for a Trial at Bar, upon an Affidavit that he had upwards of twenty Witnesses to be examined. Rule made to shew Cause, which was afterwards made absolute, Plaintiff having Liberty to examine a Witness in an ill State of Health before a Judge in the mean Time, and Defendant consenting to waive his Privilege of Parliament. *Darnel* for Defendant; *Chapple* for Plaintiff.

Roberts *against* Lord Hillsborough.

JUNE 27th, *Birch* moved to put off the Trial, which was to be the next Day. *Darnel*, for Plaintiff, objected that the Motion came too late; to which the Court agreed. No Rule.

Parr *against* Seames and others. Mich. 8 Geo. 2.

CHAPPLE moved to set aside Defendants Verdict; the Jurors, upon differing in Opinion, agreed to be determined by hustling Half-pence in a Hat; if the major Part came up Heads, the Verdict was to be for Defendants; but this Matter not appearing upon the Oath of any of the Jurors, but by Affidavit, that two of them had confessed the same, the Court, upon the first Motion, ordered the Entry of final Judgment to be stayed for a few Days only, to give Plaintiff an Opportunity to procure Affidavits from some of the Jurors; but it afterwards appearing that the Jurors were fearful to make Affidavits whereby to accuse themselves, and *Chapple* citing a Case in *Salk.* 645, *Dent* against the Hundred of *Hertford*, the Court enlarged the Rule upon hearing Counsel on both Sides 'till next Term. *Comyns* for Plaintiff.

Noble *against* Lancaster.

THIS was an Action of *Trover*, whereto Defendant pleaded *Non Assumpsit*; and thereupon Issue was joined, and Plaintiff obtained a Verdict. *Belfield* moved for Defendant in Arrest of Judgment; and the Court made a Rule to stay the Entry of final Judgment 'till Cause shewn by Plaintiff.

Gracewood *against* ———.

THE Court ordered Defendant, at Plaintiff's Expence, to give him a Copy of the Articles for *Epsom* Races, and to produce the same at the Trial. Defendant was Stakeholder, and Plaintiff, whose Horse won the Guineas or Plate, could not proceed to Trial without the Articles. *Baynes* for Plaintiff; *Eyre* for Defendant.

Letgoe, upon the Demise of Wheeler, *against* Pitt.

In Ejectment. **T**HIS Cause was tried before Lord Chief Justice at the Sittings, and a Verdict obtained by Lessor of Plaintiff. Defendant moved to set aside the Verdict, upon Affidavits that some material Witnesses for him absented themselves, and did not appear upon the Trial; and also prayed the Chief Justice's Certificate, suggesting that the Verdict was contrary to Evidence. Court rejected the Affidavits relating to the Witnesses absenting as immaterial. Chief Justice certified, that the Premises in Question were Copyhold, and both Parties claimed under one *George Cromwell*, who had made two several Surrenders. Question upon the Trial was, Whether *Cromwell* was *compos mentis* at the Time of the Surrender under which Defendant claimed; that nothing was objected to *Cromwell*'s Infanity 'till twelve Years after such Surrender; and that the Chief Justice was of Opinion the Strength of the Evidence was with Defendant. Court ordered a new Trial, upon Payment of Costs. *Eyre* and *Glyde* for Lessor of Plaintiff; *Chapple* and *Wright* for Defendant.

Baker, on the Demise of Brown, *against* Petcher,

In Ejecment. UPON the Trial a Verdict passed for Defendant, but a new Trial was granted, the Mortgage Deed under which Defendant claimed appearing to be a Counterfeit by the Stamp, the Dye which impressed it not being made 'till several Years after the Date of the Deed. Where Matter of Title is the Dispute, and Defendant obtains a Verdict, a new Trial is always denied; but this is an extraordinary Case where the Revenue is concerned.

Champneys *against* Browne. Easter 8 Geo. 2.

THREE Administrators appointed a Receiver who received a Sum of Money for their Use, and divided to each Administrator one third Part; two of the Administrators afterwards failed: And the Question was upon a Point reserved at *Nisi prius*, Whether the third Administrator was liable for the whole Sum, or for his own third Part only to a new Administrator. *Per Cur'*: Defendant is responsible for that third Part only which he received, and not for a *Devasavit* committed by his Co-Administrators. If Payment had been made to a wrong Person, the Case had been otherwise; but here the Money was properly paid. Defendant is not concerned how his Co-Administrators dispose of their Parts; the three are equally entrusted, *Cro. Car.* 312. *Cro. Eliz.* 318. *Bridgm.* 37.

Stratford *against* Marshall,

A Rule was made for Plaintiff to shew Cause why the Trial should not be respited till *Michaelmas* Term next upon Affidavits that a material Witness for Defendant was gone to Sea, and was not expected home till *August* next. *Hawkins* for Defendant. Upon shewing Cause, *Skinner* for Plaintiff objected, That the Trial ought to be put off no longer than till next Term; and that Defendant might then apply again if his Witness should not return before. *Per Cur'*: Let the Rule be absolute, it being sworn that the
Witness

Witness is not expected to return till *August* next. The Trial must be put off till *Michaelmas* Term, without farther Motion.

Note; Common Practice contra.

Lord St. John *against* Abbot. Mich. 9 Geo. 2.

THIS Cause was tried at the last *Northampton* Assizes before Mr. Justice *Reeve*; and after the Evidence was summed up in the Forenoon, the Jury retired to consider of their Verdict: Before the Rising of the Court they came into Court, attended by the Bailiff, to ask a Question, which was answered, and they were sent back. At the Sitting of the Court in the Afternoon, the Judge was informed, That some of the Jurymen (two or three) were in Court; whereupon being asked by him what they did there, answered they could not agree, and were thereupon sent back to their Fellows; and afterwards a Verdict was brought in for Plaintiff. The Judge did not certify the Verdict to be contrary to Evidence; the Court was of Opinion that this was a Misbehaviour in the Jury, for which they are finable; but not a sufficient Cause to set aside the Verdict; Plaintiff was not in Fault. If the Jury had eat and drank at their own Expence, that is a Misbehaviour, for which they are finable, but their Verdict must stand; though it is otherwise if they had eat and drank at the Expence of either Party. Rule to shew Cause why Verdict should not be set aside, discharged. *Belfield* for Plaintiff; *Birch* for Defendant.

Philips *against* Fowler. Easter 8 Geo. 2.

AFTER a Motion in Arrest of Judgment, and pending the Consideration of the Court, it being disclosed to Defendant by two of the Jurors, that they and their Fellows being divided in Opinion had determined their Verdict by casting Lots. Defendant moved to set aside the Verdict upon an Affidavit of the Fact made by the two Jurors; and upon hearing Council on both Sides, the Question was, Whether after a Motion in Arrest of Judgment, Defendant in this Case could move to set aside the Verdict. And the Lord Chief Justice, Mr. Justice *Denton*, and Mr. Justice *Comyns* were of Opinion, that though this Motion seems out of Time by the general Rule

Rule of Practice, yet, as it is founded upon a Matter disclosed to the Defendant after the Motion in Arrest of Judgment, and is made before Judgment pronounced, the Court must receive it; and the Fact, as to the Jurors determining by Chance being undisputed, the Verdict was set aside. (Mr. Justice *Fortescue*, *contra*.) *Vide* Lord *Fitzwalter's* Case, *Salk.* 647. *Skinner* and others for Defendant; *Chapple* and others for Plaintiff.

Bourne against Church. Trinity 10 Geo. 2.

SKINNER moved for Defendant the Day before the Day appointed by Notice for Trial to put off the Cause by Reason of the Absence of a material Witness. The Motion was denied, because by the Course of the Court these Motions must be made at least two Days before the Day of Trial; and because it appeared by the Affidavit whereon the Motion was grounded, that the Witness went out of Town after Notice of Trial given, so that had the Motion been made in proper Time, it could not have been granted.

Cartlidge against Eyles, Bart. Hilary 10 Geo. 2.

AT Nisi prius Plaintiff had a Verdict; and on a Motion for a new Trial the Court were divided in Opinion; and no Rule being made, Plaintiff was at Liberty to sign final Judgment. *Chapple* for Plaintiff; *Eyre* for Defendant.

Bud against Milward.

THIS was an Action for scandalous Words; and Defendant moved the Court to respite the Trial upon an Affidavit of the Absence of a material Witness. Upon shewing Cause, it was insisted the Affidavit should have proved that the absent Witness was present when the Words were spoken; and to shew that to be the Practice, a Case was quoted, *Truby against Nicholls*, *Trin.* 6 & 7 Geo. 2. *Per Cur'*: There is no Reason to encourage these Actions more than (or indeed so much as) Actions for Goods sold, and the like. The Affidavit is in common Form, which is the same in all Cases;

Cases ; and the Rule to shew Cause why the Trial should not be respited was made absolute. *Chapple* for Defendant ; *Eyre* and *Agar* for Plaintiff.

Willis, an Attorney, *against* Bennett. Mich.

11 Geo. 2.

BELFIELD moved for a new Trial after the four Days expired, but before Judgment entered on the Verdict, and obtained a Rule to shew Cause ; but the Court declared, that for the future no such Motion should be received after the four Days, unless where the Foundation of the Motion be a Fact not disclosed to the Party till after that Time.

Strickland *against* Fawcett. Hilary 11 Geo. 2.

A Rule was obtained for a View, which View being had by three Jurors only, as appeared by the Sheriff's Return, although by the Statute six are required, Plaintiff opposed the Cause coming on by Proviso at the Assizes, but did not appear at the Trial, or cross-examine Defendant's Witnesses ; and being nonsuited moved to set aside the Nonsuit.

Fawcett *against* Strickland.

THIS Cause was attended with the same Circumstances, and a Verdict being obtained without Defence, Plaintiff moved to set aside the Verdict. On shewing Cause, it appeared that these were Causes of great Expence, and many Witnesses attended at the Assizes ; a Proposal being made and agreed to, that on Payment of 50 *l.* Costs, the Nonsuit and Verdict should be set aside. Court delivered no Opinion. *Eyre* and *Bastle* for Strickland ; *Parker* for Fawcett.

Sellon *against* Chamberlayne. Trinity 11 & 12
Geo. 2.

MOVED on *Wednesday* to put off Trial for *Thursday*. *Cur'*:
We will not receive the Motion; you should have come
two Days at least before the Day of Trial; you have had eight
Days Notice, and come now too late. *Comyns*.

Vide Title **Damages**.

Vide Title **Evidence**.

Mathews *against* Lee. Mich. 12 Geo. 2.

MOTION in Arrest of Judgment, because upon the Issue of
Riens per Descent, the Jury had found that Lands came by
Descent sufficient to answer the Debt and Damages, and had not set
out the Value of the Lands descended under the Statute *W. 3. Agar*
for Plaintiff said, it was a Replication at Common Law, and not un-
der the Statute. *Birch* for Defendant. Rule *Nisi* discharged.

Martindale *against* Shipman. Hil. 12 Geo. 2.

RULE to shew Cause why Trial should not be put off, dis-
charged; the Motion being made the Day before the Day ap-
pointed for Trial, which is one Day too late. *Skinner* for Plaintiff;
Eyre for Defendant.

Bastard, Administrator of Bastard, who was Executor
of Bastard, *against* Jutsham. Easter 12 Geo. 2.

THIS was an Action of Debt on Bond. Defendant pleaded
Non est factum; whereupon Issue was joined, and a Verdict
was found for Plaintiff. *Draper* moved in Arrest of Judgment,
and objected that the Action will not lie for the Administrator of
an Executor; there must be an Administration *De bonis Testatoris*

non Administrat' by Executor. Court granted a Rule to stay the Entry of Judgment upon the Verdict till farther Order.

Grave *against* Cliffe.

THE Words (*And the said Plaintiff likewise*) after Issue tendered by Defendant, were omitted in the Issue delivered; but inserted in the Record of *Nisi prius*. *Burnett* moved to set aside the Verdict, insisting upon this as a material Variance, and had a Rule to shew Cause. But it appearing that Mr. *Lacy*, Defendant's Council, at the Trial had objected to the Evidence given by Plaintiff in Point of Law, (which is making Defence) though he did not cross-examine, the Rule was discharged. *Comyns* and *Draper* for Plaintiff; *Eyre* and *Burnett* for Defendant.

Lyte *against* Rivers. Trin. 13 Geo. 2.

HAYWARD for Defendant offered to move in Arrest of Judgment *July 5*. But *per Cur'*, the Motion comes too late, Writ of *Habeas Corpora Jur.* was returnable 15 *Trin.* and the Motion in Arrest of Judgment ought to be made before or upon the Appearance Day of that Return, which was *July 4*.

Lord G——r *against* Heath.

THIS was an Action upon the Statute of *Scan. Mag.* for the following Words spoken of the Plaintiff, G——d d—m my Lord G——r, *he is a Rogue, and all on his Side are Rogues, if the Mob would stand by me I'd drive them all, or lay the Town in Heaps.* The Words were proved upon the Trial, notwithstanding which the Jury found only 12*d.* Damages. *Darnal* for Plaintiff moved to set aside the Verdict by Reason of the Smallness of the Damages; but not being able to produce any Instance of a Verdict's being set aside merely for that Reason; though for excessive Damages Verdicts have been frequently set aside, and in Point of Reason there is the same Cause for setting aside one as the other; yet as the Difference
has

has been always taken, and Practice long settled, *per Cur'*, We can make no Rule.

Reynolds *against* Simonds.

SKINNER for Defendant moved for a new Trial after the first four Days of Term. *Per Cur'*: The Application comes too late. We have determined that these Motions shall never be received after the four Days. No Rule.

Selman *against* Courtney. Trinity 13 & 14 Geo. 2.

THIS was an Action of Trespass *Quare clausum fregit*. Defendant pleaded Not Guilty; and upon the Trial before Mr. Baron Carter, Defendant offered to give in Evidence, that the Place in which, &c. was the King's Highway; but the Judge refused to admit that Evidence to be given, and Plaintiff recovered a Verdict. Defendant moved for a new Trial, and a Rule to shew Cause was granted, on Payment of Costs. Upon shewing Cause, several Cases were cited on both Sides. And it being said, that some Judges in the Circuit had been of different Opinions with respect to this Point, the Court thought it a Matter of so much Consequence, that it was proper to be considered by all the Judges. After a Consultation, the Chief Justice declared it to be the Opinion of a great Majority of the Judges, That an Highway ought not to be given in Evidence under the General Issue, but ought to be pleaded specially; and the Rule to shew Cause was discharged. *Skinner* and *Prime* for Plaintiff; *Belfield* and *Umlin* for Defendant.

Cases cited for Plaintiff, *Watson against Spark*, 1 Salk. 287. *Sid.* 106. *Doe's Placitandi* 197. *Cogel's Case*, 8 C. 66. B. 1 *Inst.* 303. B. 5 C. 805. 6 *Mod.* 66.

For Defendant, *James against Hayward*, Cro. Car. 184. *Morfe against Bennett*, 9 G. B. R. 2 *Ventris* 297. and in *Shower*.

Frost *against* Whadcock, alias Avery and others, on the Demise of Avery, in Ejectment. Easter 14 Geo. 2.

A Rule to shew Cause, why the Trial should not be at Bar, was founded upon an Affidavit that the Premises in Question were of the yearly Value of 100*l.* and upwards; and that a strict and careful Examination of the Title would be requisite. At the Time of shewing Cause it was also alledged on Plaintiff's Behalf, that he had a great Number of Witnesses to examine; and that the Point to be tried was *Compos vel non* in *William Avery*, at the Time of making his Will, under which the Defendant *Whadcock* claims his Right. And on Behalf of Defendant it appeared, that they had some ancient and infirm Witnesses to examine, who could not travel to *Westminster*.

Per Cur': We are not, according to the Course of the Court, bound down by the Value of the Premises in Question, which is sworn to be 100*l. per ann.* As to strict Examination, it is necessary in all Cases, and is nothing with Respect to a Trial at Bar. When a long Cause is to be tried, a Judge, upon Notice, will take a Day extraordinary at the Assizes, where an examination of a great Number of Witnesses is most proper, and least expensive. There is no Nicety in this Point, or Difficulty, so as to require the Attention of the whole Court. Ancient Witnesses grow weaker every Day, and often are not able to travel to *Westminster*. Let the Rule be discharged, Plaintiff prayed Leave to examine an old Witness before a Judge, upon Interrogatories: But *per Cur'*: That cannot be done without Consent. A Cross Examination cannot be supplied by Depositions. If a Trial at Bar was ordered, it could not be till next *Michaelmas* Term; and before that Time the Assizes will be held. *Birch* for Plaintiff; *Willes* for Defendants.

Bond *against* Palmer.

BELFIELD for Defendant moved for a new Trial, suggesting the Verdict to be against Evidence, and relying upon the Judge's Certificate. *Per Cur'*: As the Cause was tried before a Judge of another

another Court, an Affidavit of what passed at the Trial must be produced, as a necessary Foundation for this Motion.

Day *against* Samfon. Trinity 14 & 15 Geo. 2.

UPON shewing Cause against a Rule for putting off a Trial, it was objected to the Affidavit, *ex parte Defendantis*, that it was made by a third Person, and not by the Party himself; but this was over-ruled by the Court. There may be many Cases where a third Person can swear another to be a material Witness, and the Defendant himself cannot; as where a Factor sells Goods for his Principal, and employs a Porter to deliver them; the Factor knows the Porter to be a material Witness, but the Principal does not, &c. The Court took another Objection to the Affidavit, which runs thus: *That A. B. and C. D. are material Witnesses for Defendant in this Cause, without whose Evidence Defendant cannot safely proceed to Trial, as Defendant is advised, and verily believes.* The Belief seems to go through the Whole, as well as to *A. B. and C. D.* being material Witnesses. As to the other necessary Part of the Affidavit (that is) that the Party cannot safely make Defence without their Testimony, though the former Part (that is) *A. B. and C. D.* being material Witnesses, ought to be positively sworn; Belief, as to it, is not sufficient; but as to the latter Part it is. These two Requisites ought not to be coupled, but disjoined. The Court enlarged the Rule that the Affidavit might be amended; which being done, a Rule was made to put off the Trial. *Skinner* for Defendant; *Wynne* for Plaintiff.

Tutton *against* Andrews.

THE Sheriff on the Execution of a Writ of Inquiry of Damages, admitted improper Evidence to be given by Defendant, whereby the Damages were lessened; the Court ordered the Inquisition to be set aside, and gave Plaintiff Leave to execute a new Writ of Inquiry. A Notion has prevailed, that where Damages are excessive, a new Trial, &c. may be granted, but not where Damages are less than they ought to be, though there is as much Reason for a new Trial,

Trial, &c. in the one Case as the other. *Burnett* for Plaintiff; *Gapper* for Defendant.

Hankey, Knight, who as well, &c. *against* Smith.
Hilary 15 Geo. 2.

RULE to shew Cause why the *Poslea* should not be amended, by returning the Verdict on the third instead of the first Count, according to the finding of the Jury, was made absolute, upon the Report of Mr. Baron *Carter*, before whom the Cause was tried. It was ordered, That the Associate do amend the *Poslea* in Court; that Defendant have four Days after the Amendment to move in Arrest of Judgment; and that Plaintiff do pay Defendant Costs of this Application. *Prime* for Plaintiff; *Bootle* for Defendant.

Cross *against* Skipwith, Baronet. Trinity 16 Geo. 2.

AFTER a Common Jury returned in *Middlesex*, and the Cause made a *Remanet* by Consent; at the Sitting after last Term, Defendant moved for a Special Jury, offering to take Notice of Trial for the second Sitting within this Term, and obtained a Rule to shew Cause; which was discharged. *Per Cur'*: This has been done between Affizes and Affizes, but we cannot delay the Plaintiff in this Case, without Consent. Death or other Accidents may happen. *Skinner* and *Eyre* for Plaintiff; *Wynne*, *Ketelbey* and *Hayward* for Defendant.

Fisher *against* Kitchingman. Mich. 16 Geo. 2.

UPON a Point reserved at the Trial by Mr. Justice *Burnett*, the Question was, Whether the *Poslea* in a former Action, produced by the Associate, was sufficient Evidence to prove that such former Action was tried, and referred, as alledged in the Declaration in this Action; or whether the *Poslea* ought not to have been returned to the Court, and an Entry made upon record that a Juror was withdrawn, and a Copy of that Entry given in Evidence? The Court was of Opinion, That according to the Thing alledged, *viz.*

G g

that

that the Cause came down to Trial upon an Issue joined in this Court, the *Poslea*, which is a Transcript of the Record, and authenticated by the Seal, was sufficient Evidence; and the Rule to shew Cause why the Verdict should not be set aside, was discharged. *Skinner* and *Boote* for Plaintiff; *Agar* and *Draper* for Defendant.

Absolon against Knight and Barber, in Replevin,
Easter 16 Geo. 2.

AVOWRY for Rent in Arrear, and Issue thereon. Plaintiff had given Notice, with his Plea in Bar, to set off a mutual Debt against the Rent, and offered to give Evidence of it at last *Berks* Assizes, before Mr. Justice *Denison*, who refused to admit the same. The Question was, Whether such Evidence ought to have been received, or not? And the Court were of Opinion, that such Evidence was properly rejected. This Case is neither within the Letter nor the Intention of the Statute. The Issue is Special and not general. It is not an Action upon a Personal Contract. The Rent favours of the Realty, and the Remedy is by Distress. Replevin is a mixed Action. The Judgment, if for the Avowant, must be a Return of the Cattle. To take the Benefit of the Statute, Plaintiff and Defendant must plead properly. In Debt on Bond, Defendant cannot set off under *Non est factum*, or *Solvit ad diem*; but must plead specially. Perhaps by Way of special Plea to the Avowry, Plaintiff might have pleaded a mutual Debt of more than the Rent. There could not have been a Set-off by Defendants under *Non cepit*; nor can there be for Plaintiff under *Riens in Arriere*. The Rule to stay the Entry of Judgment upon the Verdict for the Avowants, was discharged. *Belfield* and *Agar* for Plaintiff; *Skinner* for Avowants.

Proctor, Spinster, against Bury. Trinity 16 & 17
Geo. 2.

SPECIAL Action on the Case, wherein Plaintiff declares, that she being single and unmarried, Defendant, affirming himself to be single and unmarried, prevailed upon Plaintiff to marry him, when in Truth he had been before married to another Woman, *A. B.* still living, whereby Plaintiff lost her Chastity, &c. And on Trial, Plain-

tiff recovered 2000*l.* Damages. Defendant, on Plaintiff's Prosecution, had been convicted of Bigamy, and burnt in the Hand. *Prime* and *Wynne* moved in Arrest of Judgment, insisting, that this Crime is made Felony by Statute *Jac. 1.* That the Charge in the Declaration plainly amounts to Felony; and that this Action is merged in the Felony. The Court directed the Entry of Judgment upon the Verdict to be stayed till further Order.

Richardson *against* Frank and another. Mich.
17 Geo. 2.

Plaintiff's Goods distrained were not replevied, but, by Consent of the Attornies on both Sides, remained in the Distrainer's Hands, and without any Writ of *Re. fa. la.* or Appearance in this Court. Plaintiff declared; Defendants avowed; and after long Special Pleadings, some of which terminated in Issues joined, and others in Demurrers; and after Trial of the Issues at the Assizes, and a Verdict for Plaintiff, the Avowants moved to set aside all the Proceedings; and the Rule for that Purpose was made absolute. The Court held the Agreement to be void, a Fraud upon the Revenue and the Officers, and an Abuse of the Court and the Bar. That they had no Jurisdiction, and consequently could not give Judgment. *Draper* and *Bootle* for Avowants; *Willes* for Plaintiff.

Mead *against* Robinson.

A Point was reserved a *Nisi prius*; and by Rule, if the Opinion of the Court should be for Plaintiff, the *Postea* was to be delivered to him; if for Defendant, Plaintiff was to pay the Costs of a Nonsuit. The Court declared the Form of the Rule to be wrong; it ought to be, If the Opinion be for Defendant, that the Verdict be entered for him *ex Assensu Juratorum*. This Method of reserving Points of Law came in lieu of a Special Verdict, and ought to make a final Determination on each Side in all Cases, except Ejectment, where the Party may begin again at his Pleasure.

Hart *against* Whitlocke.

AFTER the Cause called on, and made a *Remand* by Consent, Defendant moved to put off the Trial, by Reason of the Absence of a material Witness. It appearing this Witness being material was a Matter that did not come to Defendant's Knowledge Time enough to move two Days before the last Day appointed for Trial, the Rule was made absolute to put off the Trial. *Skinner* for Defendant ; *Willes* for Plaintiff.

Marlow *against* Weekes, in Trespafs, for assaulting, beating, and wounding Plaintiff's Mare. Mich.
17 Geo. 2.

AFTER a Verdict for Plaintiff, Defendant moved in Arrest of Judgment, objecting, that an Action of Assault and Battery is not applicable to a dead Thing, or a brute Beast, but to one of the Human Species only. The Objection was now over-ruled, and the Order *Nisi Causa* discharged. Assault upon a Ship (a dead Thing) bad ; but for an Injury to a Beast, a Writ in Trespafs *Vi & Armis* appears in the Register ; the Beating and Wounding are found by the Jury. *Draper* for Defendant ; *Wynne* for Plaintiff.

Hall *against* Douglas, in Trespafs and Assault. Trin.
17 & 18 Geo. 2.

AFTER a Verdict for Plaintiff, Defendant moved in Arrest of Judgment ; objecting, that the whole Declaration was a meer Recital, and nothing positive was averred, the Word [*Whereas*] being inserted in the Beginning of the Count ; and obtained a Rule *Nisi Causa*, which was now discharged. The Court were of Opinion, that they ought to get over the old Cases, and not through this Nicety set aside the Verdict, and defeat Justice. The Recital of the Original helps, and the Conclusion of the Declaration *whereby, from whence, by Reason whereof* (the true Translation of the Word *unde*), the Plaintiff is endamaged, is an Averment, though not in common Form.

Form. Upon a Special Demurrer, the Declaration would be bad, but after Damages found by Reason of the Assault, which is the Thing done, the Defect is aided. *Draper* for Plaintiff; *Prime* for Defendant.

Lucas against Marsh. Mich. 18 Geo. 2.

THIS Action was brought by Plaintiff as Indorsee of a Promissory Note, and on Trial the Note was produced endorsed by the Drawer, but not superscribed. And the Question on the Point reserved was, Whether or no, after the Objection taken, the Endorsement to Plaintiff could be supplied in Court. Held *per Cur'*, That the Words, *Pay the Contents, &c.* may be put or set over the Name endorsed in Court. The Property is transferred by the Endorsement; and where the Endorsement appears to be superscribed, the Court never inquire when the Superscription was written. This Determination is in Favour of Justice, Honesty, and Trade; and the Practice was settled *per Pengelly*, Lord *Raymond* and Lord *Hardwick* at *Nisi Prius*. A Release to make a Man a Witness (which is a stronger Case than this) is constantly suffered to be executed in Court. No Inconvenience will arise by this Practice. In Case of a Set-off, where an endorsed Note is set off by a Defendant against a Plaintiff's Demand, it must be proved that the Name of the Indorser was written before the Plea pleaded. Rule that the *Postea* be delivered to Plaintiff. *Skinner* for Plaintiff; *Draper* for Defendant.

Norman against Beaumont, in Trespass and Assault, in Norfolk. Mich. 18 Geo. 2.

RICHARD Geater, summoned and returned as a *Nisi prius* Juror, did not attend the Assizes; but one *Richard Sheppard*, a Freeholder, who was verbally summoned to serve as a Juror on the Crown Side, and never had been at the Assizes before, did attend both Courts (as he imagined himself in Duty bound to do;) when *Richard Geater* was called on the *Nisi prius* Side, *Richard Sheppard* (thinking himself called) answered, and was sworn as a Juror. Defendant insisted, that the Verdict was null and void, the Trial not having been by twelve, but by eleven Jurors only. Neither Party

knew any thing of the Mistake till after the Trial. It was urged for Plaintiff, that Defendant ought to have challenged *Sheppard*; that after recording the Verdict, no Averment can be admitted against the Record. That *Sheppard's* Place of Abode was different from that of *Geater*, which would have been good Matter of Challenge. And if Defendant could aver against the Record, yet the Defect is cured by the Statute 32 H. 8. c. 30. The Verdict was for Plaintiff, Damages One Shilling; and Lord Chief Justice *Lee*, who tried the Cause, had certified, to entitle Plaintiff to Costs, *Per Cur'*: By the Statute 3 Geo. 2. all the twelve Jurors ought to be drawn out of the Box, and the Name of *Richard Sheppard* was never put into the Box. The Court are not bound by the Record. Here has been no Trial, This is not Matter of Challenge, nor is the Defect cured by the Statute 32 H. 8. The Rule on *Richard Sheppard* to shew Cause why an Attachment was discharged. The Rule to shew Cause why the Verdict should not be set aside, was made absolute. *Prime* for Plaintiff; *Bootle* for Defendant; *Leeds* for *Richard Sheppard*.

Wrey against Thorn. Mich. 18 Geo. 2.

THIS was an Action for breaking and entering Plaintiff's Close, &c. Defendant justified in Right of a Way. Plaintiff replied *extra Viam*; whereon Issue was joined; and a Special Jury and View applied for and granted. The Name of *Henry Luppincott* of *Alverdiscott, in Com' Devon'*, Esquire, was taken out of the Freeholders Book, and he stood as a Jurymen, and was returned among the other Jurors, in the Panel annexed to the Writ of *Venire facias*; and was summoned, and did attend both on the View and at the Trial. After a Verdict for Plaintiff on the Merits of the Cause, Defendant moved to set aside the Verdict, Mr. *Luppincott's* Christian Name being [*Harry*] and not [*Henry*]; and produced an Affidavit thereon from two Persons. *Per Cur'*: This Affidavit ought not to be received in a Motion for a new Trial. The Record, and all the Jury Process, are uniform. Mr. *Luppincott* is the real Person returned and intended to be a Juror, and there is no Pretence that the Verdict is unjust. It is commonly understood that *Henry* and *Harry* are the same Name; or that *Harry* is the same Name as *Henry* corruptly spelled. The Rule to shew Cause why the Verdict should not be set aside, was discharged. *Belfield* for Plaintiff; *Huffey* for Defendant.

Roe *against* Doe, in Ejectment, on the Demise of Cholmondly and his Wife for a considerable Estate in Yorkshire, late Sir Butler Wentworth's, deceased. Hil. 18 Geo. 2.

RULE for Tenant's in Possession to shew Cause why Issue to be joined should not be tried at Bar next Term. Objected on the Part of Lady *Wentworth* the Landlady, Sir *Butler's* Widow, That a Trial at Bar cannot be moved for by Plaintiff till after Appearance, and the Time to appear will not expire till four Days after this Term. Two Rules of the Court of King's Bench produced, one by Consent, the other not by Consent, except as to *Nisi prius* Costs, where Trials at Bar had been ordered before Appearance. Rule absolute for Trial at Bar on 8th *May* next. If Plaintiff's Motion had not been received before Appearance, no Trial at Bar could be appointed till next *Michaelmas* Term. Lady *Wentworth's* Counsel prayed the Conditional Rule, and to defend for Part; which was granted, and six Weeks Time to describe the Part defended for. *Prime* & *al* for Lessors of Plaintiff; *Skinner* & *al* for Lady *Wentworth*.

Kemp, qui tam, &c. *against* The Hundred of Stratford and Tickhill. Easter 18 Geo. 2.

AT *Yorkshire* Assizes a Verdict was taken for Defendants, and a Point reserved by Rule for the Opinion of the Court. The Rule of *Nisi prius* was made a Rule of Court, on the Motion of Plaintiff's Counsel; which Rule the Court discharged as new and unprecedented. Whenever a Point is reserved, the Verdict must always be for the Plaintiff. *Boote* for Defendant; *Prime* for Plaintiff.

Russel *against* Ball, in Assumption.

Defendant paid twenty-five Pounds into Court on the Common Rule; Plaintiff refused to accept the Money, proceeded to Trial; and on a full hearing of the Merits, had a Verdict for 25 *l*.

the exact Sum paid into Court, (in Consequence whereof Plaintiff, not having recovered more, was, by the Rule, liable to pay Costs to Defendant :) To avoid which, Plaintiff moved to set aside the Verdict, objecting, that the Cause was tried by eleven Jurors only. It appeared that one *John Pearce*, summoned on the Jury, did not appear, but his Son of the same Name, not qualified, attended the Assizes, and when the Father was drawn, and called, answered for him, and was sworn on the Jury. Plaintiff also objected to the Smallness of Damages found. *Per Cur'*: Attaint will not lie against Jurors for finding too small Damages. Where a Demand is certain, as by Promissory Note, the Court will set aside a Verdict for too small Damages, but not where the Damages are uncertain, as in this Case, for curing a Wound. But the Verdict by eleven Jurors only is no Verdict; it is null and void. Rule absolute to set aside the Verdict, without Costs. *Vide Norman against Beaumont, Mich. 18 Geo. 2. Belfield for Plaintiff; Draper for Defendant.*

Stanynought *against* Cofins, one, &c. Hilary

19 Geo. 2.

ACTION of Trespass for mesne Profits, brought by the Nominal Plaintiff, the Lessee in Ejectment, against the Tenant in Possession, after Judgment by Default against the Casual Ejector, for Want of the Tenant's Appearance. No Possession in Plaintiff proved at the Trial; *Postea* stayed; and Point reserved. The Question is, What ought to have been proved? *Per Cur'*: The Title need not be proved. The Tenant is so far privy to the Suit, he has been served with a Declaration, and is thereby concluded as to the Title, though he does not appear. The Judgment must be supposed to be right; if not, Tenant might move to set it aside. After Action brought for mesne Profits, Tenant not having entered into the Common Rule, is not concluded, either as to his own Possession, or as to Plaintiff's being in Possession at the Time of the Demise, which possibly might have been laid eighteen Years back, and a Tenant at Will might have been only three Days in Possession. Damages ought to be given for no longer Time than Defendant is proved to be in actual Possession. Plaintiff's Possession ought also to be proved, and from that Time only Damages to be recovered. In Case of a Lease sealed on the Land (the old Way) where the Possession is vacant,

Plaintiff cannot recover for *mesne Profits*. If Tenant enters into the Rule to confess Lease, Entry and Ouster, the Title must be proved before the Demise laid. Tenant privy and Party is to be bound by what himself confesses, though in the Rule only, and not at the Trial. Trespass is a possessory Action, only to be brought by Person in Possession, and from Time of Possession; and though Ejectments are Creatures of the Court, the Action for *mesne Profits* is like Trespass with a *Continuando*. As Plaintiff did not prove his Possession, he ought to have been nonsuited. The *Posse* ought to be delivered to Defendant, &c. *prout*. Rule of Assizes, 1 *Sydesin* 239. Where Tenant enters into the Common Rule, and the Action for *mesne Profits* is brought by the Lessor in Ejectment, Plaintiff's Possession must be proved; if by the Lessee, his Entry and Possession is confessed, and need not be proved. No other Difference in Action brought by Lessor or Lessee, (1 *Salk.* 246. wrong.) Tenant concluded as to Entry, when confessed, except an Entry to avoid a Fine. *Skinner* for Plaintiff; *Willes* for Defendant.

Love and Appleton *against* Jarret. Easter 19 Geo. 2.

Defendant had Time to plead by a Judge's Order, rejoining *gratis*. Plaintiff delivered a Paper-Book, containing a bad Replication, and an Issue joined by Defendant. Defendant's Agent's Clerk received and paid for the Paper-Book; but his Master perceiving the Replication to be bad, returned the Book to Plaintiff's Agent, and gave Notice of the Mistake, notwithstanding which Plaintiff went on to Trial, and had a Verdict, without Defence. Rule absolute to set aside the Verdict, without Costs. *Skinner* for Plaintiff; *Draper* for Defendant.

Goodtitle, on the Demise of Symons, Esquire, *against* Clark, in Ejectment. Mich. 20 Geo. 2.

AFTER the Merits of the Cause had been determined at the Assizes by a Special Jury, after a Trial of twenty Hours, Defendant moved to set aside the Verdict, upon Affidavit that Plaintiff's Shewer at a View, pursuant to a Rule of Court previous to the Trial, had misbehaved himself, by telling the Viewers, *This Place is called Abrahall's Yat, and this Conygree-hill*; (which were not the

the Places in Question;) and saying, *These Cottages pay Mr. Symons 5 d. or 6 d. a-Year Rent.* Defendant insisting, that nothing more than the Place in Question, which was one single Cottage, should have been shewn to the Viewers. Upon hearing Counsel on both Sides, the Court discharged the Rule, being of Opinion, That on a View the Shewers may shew Marks, Boundaries, &c. to enlighten the Viewers; and may say to them, *These are the Places which on the Trial we shall adapt our Evidence to.* The Jury could have no Light from looking at the Cottage only. The Question to be tried was, Whether it stood within Mr. *Symons's* Manor, or not? Had an ancient Man been produced to the Viewers, and he had acquainted them that he had known the Place many Years, and given an Account of the Boundary, &c. this would have been improper, because it is giving Evidence before the Trial. *Belfield* for Defendant; *Bootle* and *Eyre* for Plaintiff.

Hicks against Young in Replevin. Mich. 20 Geo. 2.

PLaintiff did not appear at the Assizes, Defendant brought down the Record, and his Counsel insisting strongly on a Verdict, Mr. Baron *Reynolds* before whom the Cause was tried, complied, and a Verdict was found for Defendant, though Plaintiff did not appear. Upon Application by Plaintiff to set aside the Verdict, the Court, after hearing the Judge's Report, ordered the *Posse* to be amended, and a Nonsuit to be returned instead of a Verdict for Defendant; and that Defendant should pay Costs of the Motion. *Prime* for Plaintiff; *Draper* for Defendant.

Chandler against The Hundred of Sunning, on the Statute of Hue and Cry. Hilary 22 Geo. 2.

ON a Case made on a Point reserved at the Trial, where a Verdict was found for Plaintiff, subject to the Opinion of the Court, Mr. Justice *Abney* and Mr. Justice *Birch* delivered their Opinions, That though Plaintiff cannot recover the Value of Bank-Notes of which he was robbed, to the Value of 960 l. for Want of a sufficient Description thereof in his Advertisement in the *London Gazette*, yet he ought to recover for what is sufficiently described,

(viz.) his Watch and Money, Value 10 l. the Words of the late Act being to be taken distributively. Lord Chief Justice and Mr. Justice *Burnett* were of Opinion, that nothing can be recovered. The Words of the late Act are, That Plaintiff shall not maintain his Action, unless he describes the Robbers, &c. together with the Goods and Effects of which he was robbed; twenty Days before the Advertisement are given to the Person robbed to recollect a particular Description. The Party robbed ought to discover, as well as he can, all the Goods he lost, to give Light to the Hundred to take the Robbers. The Person robbed gets nothing by the taking; the Public indeed are benefited. A Person robbed of a large Sum of Money, probably cannot farther describe it than that it was in Gold and Silver; but perhaps can describe other particular Things then lost; which he ought to do. The Description of Bank-Notes by Numbers, Dates and Sums (which in this Case were omitted) are highly useful for Discovery. No two have the same Marks. If Plaintiff, at the Time of his Advertisement, had not known the Numbers, &c. but recollected them afterwards, the Action would lie. But on the Trial he acknowledged that he knew them, and they were all particularly entered in his Pocket-book at the Time of the Advertisement. The Court being divided, no Judgment could be entered on the Verdict.

Moyse, Widow, against Cockledge. Hilary 22 Geo. 2.

THE Action was Trespass *Vi & Armis* for breaking and entering Plaintiff's House, and taking and carrying away her Goods. Defendant pleaded the General Issue, and at the Trial shewed, that the Goods were taken as a Distress for Non-payment of a Poor's Rate (which Plaintiff obstinately refused to pay,) and sold, and after Payment of the Rate, and deducting 1 s. for the Expence of the Distress and Sale, the Overplus was restored to Plaintiff. Defendant went through every Requisite under the Statute 43 *Eliz.* to shew the Regularity of the Distress and Sale, and the Jury were ready to give a Verdict in his Favour; but at the pressing Instance of Defendant's Counsel, a Verdict was given for Plaintiff, Damages 1 s. and the following Point reserved for the Opinion of the Court, (viz.) Whether, as no Provision is made by the Statute for retaining the necessary Expence of the Distress and Sale, Defendant could justify

justify deducting 1 s. for the same. Which Point having been argued, the Court, after Consideration, delivered an unanimous Opinion, That as the Act gives a Right to distrain and sell, all Incidents necessary to obtain that Right are included. If the Thing distrained cannot be sold without Expence, such Expence is necessary, and given by the Statute. The Jury were to judge of the Reasonableness or Extravagance of the Expence; the Court must now take the Expence to be necessary and reasonable. If Defendant could not have justified the Expence to be necessary, yet an Action of Trespass *Vi & Armis* would not lie for the 1 s. retained, but an Action on the Case for Money had and received for Plaintiff's Use. The *Postea* ordered to be delivered to Defendant. The Rule of *Nisi prius* was drawn up in the old Way, viz. That if the Court should be of Opinion for Defendant, the Verdict for Plaintiff be set aside, and Plaintiff pay Costs of a Nonsuit; which is a bad Form: It should be, That Judgment of Nonsuit be entered; otherwise Defendant could have no Remedy in Case of Plaintiff's Death. *Prime* for Plaintiff; *Draper* for Defendant.

Woeden, on the Demise of Long, *against* Saunders,
Widow and others, in Ejectment. Easter 23
Geo. 2.

THE *Venire facias* was awarded by Mistake, returnable on the Morrow of *Ascension*, instead of Eight Days of the *Purification*. Defendants, though their Witnesses attended the Assizes, made no Defence at the Trial, but confessed Lease, Entry and Ouster, and suffered Plaintiff to take a Verdict, relying on the Mistake in awarding the *Venire*, returnable at a Day subsequent to the Assizes, till after which Return, and Default by Jurors, there could be no *Nisi prius*. The Jury Process was made returnable at the proper Days. The Court held the Variance material, on the Authority of two Cases cited by Plaintiff's Counsel, *Bastard & al^s against Bartlett*, Trinity 3 Geo. 2. *Dale against Holmes*, Mich. 4 Geo. 2. in B. R. Verdict set aside on Payment of Costs. *Prime* for Defendants; *Draper* and *Wyne* for Plaintiff.

Hawys, one, &c. *against* Rix. Mich. 24 Geo. 2.

PPOINT reserved at the Trial and argued in the Court was, Whether the *Placita* in the Record, referring to a Time more than a Month after Plaintiff's Bill of Costs delivered, be sufficient to support his Action for Fees, &c. charged in his Bill? Or that, in Order to shew the Commencement of the Suit, Plaintiff ought not to have produced his Attachment of Privilege (the Original Writ) or an examining Copy, the Statute 2 G. 2. requiring such Bill to be delivered a Month before Action brought? The Bill was proved to be delivered 25th September 1749; the *Placita* was of *Hilary* Term then next, the Term of which Issue was joined. The Court were of Opinion, that Plaintiff ought to make out his Case by the best Evidence the Nature of the Thing will admit. The *Placita* is not conclusive; the Writ may correspond with it, and yet bear Teste the first Day of *Michaelmas* Term 1749, which is before the Month expired; nor is the *Placita* the best Evidence, because Plaintiff might have had the Writ. Judgment for Defendant *Nisi causa ante Clausum Termini*. No Cause shewn. *Willes* for Plaintiff; *Bootle* for Defendant.

Dobson *against* Stevens. Hilary 24 Geo. 2.

WILLES, for Defendant, moved for a Special Jury, as of Course; but before the Rule drawn up, the Secondary doubting, prayed the Direction of the Court; and it appearing that Common Jury Process had been awarded, issued and returned, and that the Cause stands as a *Remanet* in Lord Chief Justice's Paper, the Court refused to grant a Special Jury. Though in Country Causes, between Assizes and Assizes, the Practice is otherwise. *Wynne* for Plaintiff.

Bartlett *against* Spooner. Easter 24 Geo. 2.

THIS was an Action of Trespass, to which Defendant, by Leave of the Court, had pleaded three Pleas, *viz.* Not guilty, and two several Justifications. On the Trial, Defendant proved his second Plea to the Satisfaction of the Court, and obtained a Verdict

a Verdict on the first and second Issues ; but as to the third Issue, no Proof was gone into, nor any Verdict found relating to it. *Belfield*, for Plaintiff, objected, That the Verdict was incomplete, imperfect and uncertain, nothing being found as to a material fact put in Issue ; and therefore, as to the third Issue, a *Venire facias de novo* ought to be awarded. On shewing Cause, *Prime*, for Defendant, observed, that by the first Plea, (Not guilty) the Whole is put in Issue ; that by the second Plea, the whole Trespass is covered ; and therefore the Verdict is compleat. It is found thereby, That Plaintiff has no Cause of Action, and the Judge who tried the Cause, did not think it needful to go farther. As Plaintiff has no Cause of Action, he can have no Damages. Contingent Damages in Case of Issue and Demurrer, and Issue tried before Argument, are not necessary to be found at the Trial on Plaintiff's Verdict, but may be afterwards supplied, if Judgment for Plaintiff on the Demurrer. *Per Cur'* : Here is enough found for that Court to give Judgment upon. No *Venire facias de novo* ought to issue. It was not the Business of Defendant, but of Plaintiff, to have the third Issue determined, if he imagined that thereby he might be intitled to Costs, or any other Advantage. The Rule discharged.

N. B. Plaintiff gave no Evidence on the Not guilty.

Britton, who as well, &c. *against* Peirce. Mich.
25 Geo. 2.

THIS was an Action brought on the Statute 13 *Eliz.* for setting up a fraudulent Judgment, wherein Plaintiff on Trial obtained a Verdict for the Penalty of 45 *l.* besides which, Corporal Punishment, and Imprisonment for six Months, are inflicted by the Statute. *Agar*, for Plaintiff, moved, for Leave to compound, pursuant to Statute 18 *Eliz. ch. 5.* But *per Cur'* : That Statute extends only to Actions brought by common Informers ; this Action is brought by the Party injured. The Defendant is convicted by the Verdict, and after Conviction Leave is never given in any Case to compound. No Rule. The Judgment to be entered under the Court's Direction. *Vide Cooke's Entries, fo. 149.*

Jones, on the Demise of Rayner, *against* Sandys and others, in Ejectment. Hilary 26 Geo. 2.

PPOINT reserved at the Trial, Whether a Bond, in the Condition whereof a Mortgage-Demise was contained, stamped with a treble Sixpenny Stamp, read in Evidence for Plaintiff, ought to have been admitted, or not, for Want of its being stamped with two treble Sixpenny Stamps? It being insisted on, by Plaintiff's Counsel, that *per Stat. 12 Ann. cap. 9. sect 21 & 24.* every Indenture, Lease or Bond, are separately charged, and consequently this Instrument, being both Bond and Lease or Demise, ought to have paid twice the treble Sixpenny Duty.

The Court thought the Act of Parliament darkly penned. The Revenue Acts are generally framed by the Officers concerned in the several Branches, without being laid before the Attorney or Solicitor General. The Act is ambiguous. It is safest to follow a long Series of Construction. This is one Bond, of which there is one Execution. A Feoffment, with a Warrant for Livery of Seisin, Bargain and Sale, operating as a Covenant to stand seised, or (being inrolled) as Lease and Release, Demise and Redemise, Mortgage with a Covenant to pay the Money, constantly thought to be singly charged only, and the Practice has been consonant. A different Construction of the Act would make great Confusion in Purchase-Deeds and Settlements, often relating to Freehold, Leasehold and Copyhold Estates in one and the same Deed. Every Copyhold Surrender, and every Admittance, seem to be charged separately, and yet one Stamp of 2 s. 3 d. has been held sufficient for both Surrender and Admittance; and so is the Practice. The Subject's Property, as well as the King's Revenue, is to be protected. If the Deed in Question be not Evidence, it is the same Thing as void: For though the Commissioners of the Stamp-Duty may (tempted by a large Sum of Money) order a Stamp to be added, yet they are not obliged so to do. The proper Time for the Objection was when the Bond was offered in Evidence. 2 Lord Raymond 1445. Rule, That the *Postea* be delivered to Plaintiff, to sign Judgment. *Prime* for Plaintiff; *Poole* for Defendants.

Smith *against* Gregg, in Yorkshire. Easter 26 Geo. 2.

THE Record was offered to be entered at last Affizes, a little out of Time, and Defendant's Attorney, then present, had refused to consent that it should be received. On Application by Defendant for Judgment as in Case of Nonsuit, the Court refused to give Costs of the Application, but ordered Plaintiff to pay Costs for not proceeding to Trial, and peremptorily to proceed to Trial at next Affizes. *Pool* for Defendant; *Willes* for Plaintiff.

Fitch, *qui tam*, *against* Nunn.

MOTION, *per Draper* for Defendant, for a new Trial, after Verdict for Plaintiff, in an Action upon a Penal Statute, (wherein no Defence was made at the Trial) founded on a Variance between the Issue delivered and the Record of *Nisi prius*, the Words following, (*viz. And thereupon the said Plaintiff, by George Boldero his Attorney saith*), being omitted in the Issue delivered, though put into the Record. This was admitted not to be a material Variance affecting the Merits, and in Civil Actions helped by the Statute of Jeofails, but not in an Action on Penal Statute. In Actions brought by Original Writ, the Method is to recite the Writ, and then to Count; here is nothing but recital, without any Count. By Statute 18 *Eliz.* a particular Method is prescribed to the Prosecutor; he must declare in Person, or by Attorney. Plaintiff in this Case may, possibly, be under twenty-one Years of Age, and, if so, cannot support this Action, wherein he cannot declare by his *Prochein Amy*.

The Court, after hearing *Prime pro Quer'*, did not incline to think the Variance material, or to favour the Distinction made *per Draper*. But as Plaintiff's Agent had made a Blunder, and the Merits had not been tried, ordered a new Trial, and Costs to attend the Event.

Holland *against* Heron. Trinity 26 & 27 Geo. 2.

THE Sheriffs and Coroners of *London* being interested in the Question to be tried, *Agar* for Plaintiff moved, that Defendant might shew Cause why a Special Jury should not be struck and returned by Elizors to be appointed by the Court. *Per Cur'*: The Special Jury may be moved for of Course, after Elizors appointed. The first Rule was to shew Cause why it should not be referred to Prothonotary *Cooke*, to consider of two fit Persons to be Elizors, and to report; which Rule being made absolute, without Opposition; and the Prothonotary having named *John Wakelin* and *Elisba Bischoe*, the next Rule was to shew Cause why they should not be appointed Elizors by the Court; which Rule was also made absolute, without Opposition.

Whitehill *against* Carr. Mich. 27 Geo. 2.

THIS was an Action for Words, to which Defendant, by Leave of the Court, had pleaded four several Matters, the fourth Plea an Accord and Satisfaction; Plaintiff's Agent delivered an Issue, made up a Record, and proceeded to Trial, after Issues joined on the three former Pleas, but without replying, or taking any Notice of the fourth Plea. Defence was made, and Plaintiff obtained a Verdict. Defendant moved for a new Trial. It appeared that some Evidence had been given on Defendant's Part to make out his Case upon the fourth Plea, which fell short of the Fact pleaded, though that Evidence was declared by Mr. Serjeant *Eyre*, before whom the Cause was tried, to be improper. Rule, that Plaintiff do either demur, or reply issuably to the fourth Plea. If he demurs, that Proceedings be stayed till after Argument; if he replies issuably, that a new Trial be had at next Assizes; and Costs of former Trial and Motions attend the Event. *Wynne* and *Wilson* for Defendant; *Prime* and *Draper* for Plaintiff.

Fitch, who as well, &c. *against* Nunn.

THIS was an Action brought on one of the Penal Statutes made to preserve the Game, wherein Defendant obtained a Verdict; Plaintiff moved for a new Trial, and the Judge before whom the Cause was tried reported the Verdict to be contrary to Evidence. Notwithstanding which, the Rule to shew Cause why a new Trial should not be had, on Payment of Costs, was discharged; because no Instance could be shewn where in an Action on a Penal Statute, in which a Verdict was found for Defendant, a new Trial had ever been granted. *Willes* and *Agar* for Plaintiff; *Wynne* for Defendant.

Corish against Kennedy.

THE Court upon this Motion (which was to put off a Trial) suffered Affidavits to be read, taken before a Vice-Counsel abroad. Such Affidavits are constantly received and read at the Counsel-Board. It is not reasonable to expect that such Sort of Affidavits should be taken before Persons appointed Commissioners. *Peole* for Defendant; *Wynne* for Plaintiff.

Laffiter against Harvey. *Bull against* the Same.
Trin. 27 & 28 Geo. 2.

AFTER Verdicts obtained by Plaintiffs, the Records of *Nisi prius* and Writs of *Hab. Corpora Jurat'*, were accidentally lost by Mr. *Jacomb* late Associate of the Home Circuit; Rule for Defendant and *Jacomb* to shew Cause, why new Records and Writs should not be made out agreeable to the old, and Verdicts returned according to the finding of the Jury, made absolute on Affidavit of Service, no Cause being shewn to the contrary. *Wynne* for Plaintiffs.

Armstrong

Armstrong on the Demise of Neve and another *against* Woolsey and others, in Ejectment. Hilary 28 Geo. 2.

THE Point or Question reserved at the Trial, for the Opinion of the Court was, To whose Use a Fine with Proclamations levied without any Declaration of Uses should operate? Held *per Cur'*, That where no Use is declared, there is no Consideration; the Fine must result to the ancient Use; it sufficiently appears in this Case, that the ancient Use was in the Cognizor. The *Posse* ordered to be delivered to the Plaintiff. *Godbolt* 180. *Vaughan* 43. 2 *Cooke* 58. *Beckwith's Case*. *Shephard's Touchstone of common Assurances*, page 501. *Wynne* for Plaintiffs; *Poole* for Defendants.

Pendock on the Demise of Mackinder *against* Mackinder and others, in Ejectment.

(VERDICT for Plaintiff as to a fourth Part of the Premises, subject to the Opinion of the Court.) Point reserved at the Trial and twice argued was, Whether a Person convicted of Petit Larceny, and who had undergone the Punishment of Whipping, was, or was not a competent Witness to a Will, whereby the Premises in Question were devised? The Court held the Person convicted not to be a competent Witness; Petit Larceny is Felony, 'tis a Crime equal to grand Larceny, if not worse, because the Temptation is less to steal little than much, it springs from an evil Mind. The *Posse* ordered to be delivered to Plaintiff.

Anonymous.

RULE for a View on the Face of the Declaration (which was for obstructing a Water Course) denied; 'tis never granted without an Affidavit in any Case, except an Action of Waste.

Brookes on Demise of Mence *against* Baldwyn, in Ejectment. Trin. 28 Geo. 2.

UPON Motion for a new Trial, Mr. Baron *Adams*, before whom the Cause was tried, reported to the Court, That the Verdict (which was a general Verdict for Plaintiff,) was good in Part and bad in Part, agreeable to Evidence as to Lands in Possession of one of Defendant's Tenants, contrary to Evidence as to Lands in Possession of another Tenant, 12 *Mod.* 271. *Salk.* 648. 3 *Salk.* 362. were quoted to shew that where a Verdict is good in Part it must stand. Rule that Plaintiff shall take Possession of that Part of the Premises only, as to which the Judge reported in Favour of the Verdict. *Martin* for Defendant; *Poole* for Plaintiff.

Welch against Richards Clerk. Hil. 29 Geo. 2.

THIS was an Action of Trespass on the Case brought by Plaintiff against Defendant for a malicious Prosecution, and Imprisonment of Plaintiff; and Plaintiff thinking it necessary not only to have the Inspection, and a Copy of Defendant's Information, which was taken in Writing by *Buckland Nutcombe Blewett*, Esquire, a Justice of the Peace for *Somersetshire*, touching Plaintiff's marking a Sheep, with a felonious Intent to steal the same, being the Property of Defendant, but also to have the Original, and also the Warrant granted by said Justice on such Information, and in Consequence whereof Plaintiff was apprehended and imprisoned, produced at the Assizes on the Trial of this Cause, applied to the Court on an Affidavit of the Fact as to Demand and Refusal; and obtained a Rule for the Justice to shew Cause, why Plaintiff his Council or Attorney should not have Leave to inspect said Information, and to take a Copy thereof at Plaintiff's Expence; and why the Justice should not produce such Information, in order that the same might be given in Evidence on the Trial of this Cause, at next Assizes for said County; and also for *Richard Darch* the Constable, who executed the Warrant, to shew Cause, why he should not produce the Warrant, which was granted by said Justice for apprehending Plaintiff, in order that such Warrant might be given in Evidence

on said Trial. Note; The Plaintiff having had a Copy of the Warrant delivered him by the Constable, a Copy thereof was not now moved for.

On shewing Cause it was insisted, that it was going too far, to order the Justice and the Constable to produce the Information and Warrant (because that implied a personal Attendance;) and that Copies were sufficient. On the other Side it was insisted, that in a Case of this Nature, Originals must necessarily be produced on the Trial, and for that Purpose the Case of *The King* against *Smith* in *Sir John Strange's Reports*, Vol. 1. p. 126. was cited.

The Court ordered, That Plaintiff his Counsel or Attorney have Leave to inspect the Information, and to take a Copy thereof at Plaintiff's Expence; and that the Justice should produce or cause to be produced the said original Information, in order that the same might be given in Evidence on the Trial of this Cause at next Assizes for said County; and that the Constable should produce or cause to be produced the original Warrant, in order that the same might be given in Evidence on said Trial. *Pools* for Plaintiff; *Davy* for *Blewett*, Esquire.

Denn on the Demise of Lawson, Esquire, *against* Farr and another in Ejectment. Mich. 30 Geo. 2.

AFTER Issue joined, and before the Day of *Ni. pri.* one of Defendants died, Plaintiff sued out a *Ve. fa.* between him and surviving Defendant, and made the *Jurata* at the Foot of the Record of *Ni. pri.* agreeable thereto. Verdict for Plaintiff objected at the Trial, That the Death of the deceased Defendant ought to have been suggested on the Record of *Ni. pri.* and thereupon an Award entered of a *Ve. fa.* between Plaintiff and the surviving Defendant; Point reserved was now argued, and thereupon Plaintiff produced the Roll in Court; whereon the Suggestion and Award of the *Ve. fa.* as above were entered, which the Court held to be sufficient; no Continuances are necessary to be inserted in the Record of *Ni. pri.* Rule that Plaintiff have Leave to enter Judgment on *Postea*, and that Defendant have Time to bring a Writ of Error 'till the Day after next Seal in Chancery. *Prime* and *Hewitt* for Plaintiff; *Martyn* for Defendant.

Fitzpatrick *against* Pickering. Easter 30 Geo. 2.

AFTER Trial at Sittings in *Middlesex*, and a Verdict for Plaintiff for 1*l.* 8*s.* 9*d.* Defendant (the Damages being under 40*s.*) upon an Affidavit that he was resident in *Middlesex*, and liable to be summoned to the County Court, there moved for Leave to enter a Suggestion of that Fact upon Record to prevent Plaintiff from having an Allowance of Costs, and to entitle Defendant to double Costs, pursuant to the Statute 23 Geo. 2. no Certificate having been granted by Lord Chief Justice at the Trial, to prevent Defendant's taking Advantage of that Statute, in Opposition to this Motion; no Affidavit denying the Fact contained in Defendant's Affidavit was produced by Plaintiff, but 'twas sworn that Defendant before Trial offered 2*l.* 2*s.* and Costs; and 'twas observed that Plaintiff had given Evidence only on some, not on all the Counts in his Declaration, that he had proved a larger Debt than 40*s.* which had been reduced by a Set-off on Defendant's Part to the Sum recovered, and that if Plaintiff had been nonsuited, he would have been liable to Payment of single Costs only. The Court held that they were bound by the finding of the Jury. Rule absolute for Leave for Defendant to enter the Suggestion, Plaintiff may traverse it if he thinks fit. 1 *Strange* 49. Affidavit of the Fact the proper Foundation for Leave to enter Suggestion. 2 *Strange* 974. 1120. Suggestion the proper Method. *Prime* and *Martyn* for Defendant; *Davy* for Plaintiff.

Afterwards the Suggestion having been entered; Defendant moved for Judgment thereupon. Rule that unless Plaintiff pleads to the Suggestion by the first Day of next Term it is to be taken for true, and Prothonotary is to allow double Costs to Defendant according to the Statute.

Harvey *against* Adderly. Mich. 31 Geo. 2.

RULE made absolute giving Leave to Defendant to enter on the Roll a Suggestion, that he at the Time of Commencement of the Suit did live and reside in *Middlesex*, was liable to be summoned to the County Court, and that Plaintiff's Cause of Action did not exceed the Value of 40*s.* under Statute 23 Geo. 2. Plaintiff's Counsel insisted that said Statute extends only to

Causēs of Action accruing within the Jurisdiction of the County Court. This was not deemed to be a good Objection against Leave to enter the Suggestion. Plaintiff may traverse the Suggestion if he thinks fit. *Davy* for Defendant; *Stanyford* for Plaintiff.

Balchin against Clarke.

RULE to arrest final Judgment after Verdict for Plaintiff discharged. The Action was brought for a Forfeiture incurred by an Offence against the Turnpike Acts, 26th and 28th King George 2d. The Objection was, That the Action was brought in the Informer's Name only, not *Qui tam*. though half the Sum forfeited is given to the Trustees of the Turnpike, which Objection was over-ruled, the Action being proper in the Informer's Name only. *Vide* Acts above. *Hewitt* for Defendant; *Poole* for Plaintiff.

Harvey against Adderley. Mich. 31 Geo. 2.

Defendant shew Cause why Rule to enter Suggestion should not be discharged, and Suggestion taken off the Roll upon Affidavit, that Plaintiff's Cause of Action arose in *Essex*. *Poole* and *Stanyford* for Plaintiff; *Hewitt* and *Davy* for Defendant, insisted that as *Venue* is laid in *Middlesex* by Plaintiff himself, he shall not afterwards be permitted to say that his Cause of Action arose in *Essex*. The Certificate in Statute 23d George 2d by the Judge in that Title of Freehold or Bankruptcy came in Question. This Matter not proper to be determined on Motion. Rule discharged. Plaintiff have Time till next Term to demur to or traverse the Suggestion.

Croser *against* Thomlinson in Replevin. Hil.
32 Geo. 2.

A Race-horse distrained for Rent at a Stable on *Barnett Common*, half a Mile distant from the Inn, (the Red Lion at *Barnett, Middlesex*) the Stable no Part of the Inn. Horse distrainable. Judgment (on Case made at Trial) for the Avowant. Plaintiff has no Remedy but against the Inn-keeper. *Hewitt* for Defendant; *Poole* for Plaintiff.

Parker *against* Asline. Mich. 32 Geo. 2.

Dickins in the Common Pleas, *York Summer Assizes 1758*,
before Lord *Mansfield*.

THIS was an Action of Trespass for the mesne Profits of a House in *Sheffield*, and was brought in the Name of the Nominal Plaintiff in Ejectment after Judgment by Default against the casual Ejector.

The Costs of the Ejectment were also inserted in the Declaration as consequential Damages of the Trespass complained of.

On the Trial of this Cause the Plaintiff gave in Evidence the Judgment in the Ejectment, the Writ of Possession, with the Return of Execution upon it, the *Defendant's Occupation of the Premises*, the *Value of them during that Time*, which was proved to be 20*l.* and the *Costs of the Ejectment* amounting to 12*l.* more.

On the Part of the Defendant it was objected, that as the Judgment in the Ejectment was by Default against the casual Ejector, this Action could not be legally maintained in the Name of the Nominal Plaintiff, but ought to have been brought by the Plaintiff's Lessor. In support of this Objection it was argued, that though the Law allows fictitious Proceedings in Ejectment for the trying of Titles; yet in Actions for mesne Profits no such Fiction prevails, but the Suit, the Injury, and the Defendant, are real, and the Action in no respect differs from any other Action of Trespass; that this being a possessory Action, could in no Case be maintained, unless the Plaintiff's Possession was either proved or admitted; and that in the present Case, as the Plaintiff could not possibly prove an actual En-
try,

try, there was no Evidence of his Possession that could affect or be received against the present Defendant ; It was admitted that an Action of this Kind might be brought in the Name of the Nominal Plaintiff in Ejectment, where the Tenant had appeared and confessed Lease, Entry, and Ouster, because being thereby a Party to the Record in Ejectment, and having confessed the Entry of the Plaintiff, he is estopped by that Confession, and by the Judgment against him, from controverting afterwards the Plaintiff's Possession ; but where the Judgment in Ejectment was by Default against the Casual Ejector, there was no such Confession of the Tenant, no Matter of Record to estop him, but he was equally at Liberty to deny the Plaintiff's Possession, and to put him upon proving it as in any other Action of Trespass, and that having never been a Party to the Judgment in Ejectment, neither that Judgment, nor the Writ of Possession upon it (as they were merely between the Nominal Plaintiff and a third Person, the Casual Ejector) was any Conclusion or Evidence against the present Defendant.

It was therefore insisted, that the Action in Question ought to have been brought by the Lessor of the Plaintiff in his own Name, who might have proved an actual Entry under the Writ of Possession, and that, by that Entry the Possession he obtained would relate back to the Commencement of his Title, but being brought in the Name of the Nominal Plaintiff, and the Defendant being a stranger to the Judgment in Ejectment, the Plaintiff had failed of supporting his Action. *Vide antea* the Case of *Stannynought and Cosins*, which was cited *Michaemas Term 32 Geo. 2.* Lord *Munsfield* Chief Justice in *Banco Regis*. Having stated the Case, and that he had reserved it for his own Opinion at his Chambers ; undertaking to procure the Opinion of all the Judges, without Expence or Delay to the Parties ; delivered the same as follows, (*viz.*) At the Trial it was objected, that this being upon a Judgment by Default in Ejectment, it materially differed from the Case of a Verdict where the Tenant had appeared ; that though in *Strange* 960, it is said, in such Action for the mesne Profits, the Defendant may controvert the Title, yet both Parts of that Case have since been contradicted.

A Case in *Barnes's* Notes was cited on the Trial as a Case in Point, and some Circuit Traditions in Support of it, where it is held, that though the Title need not, yet that the Possession must be proved. Though I was clearly of Opinion upon Principles against the Objection at the Trial without hearing the Council, yet in respect to
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the Authorities cited, and for the sake of settling the Practice in this Proceeding, which seems now to be the only Remedy for recovering the Possession. I chose to put it into this Method.

I laid the Question before all the Judges the first Day of the Term, who have since looked into the Books, and produced many Manuscript Cases of Opinions both Ways, which are now of no Consequence, as all the Judges are unanimous in Opinion, that the Nominal Plaintiff and Casual Ejector are fictitious Characters, introduced merely for Form, for the more effectual and expeditious Way of trying the Title, to avoid Delays and Intricacies of special Pleading, they are the mere Creatures of the Lessor, and the Lessor and the Tenant are the real substantial Parties to the Record; as to the Tenant he must be served with Notice of the Ejectment, and if he is not, he may set aside the Proceedings, so that he cannot lose the Possession without having Notice to use Means to defend himself.

That there is no material Difference whether the Judgment be by Default, or after a Verdict; in the latter Case the Title is tried and found against him, in the first he confesses it by saying nothing, and as long as such Judgments stand unimpeached they bind the Tenant.

An Action for mesne Profits is consequential to a Recovery in Ejectment, and may be brought either in the Name of the Lessor, or Plaintiff in Ejectment, and in both Cases it is the Action of the Lessor, whose Name so ever be used, and the Title is admitted so long as the Judgment stands, yet this Judgment like all others is only conclusive as to the Subject Matter of it, it proves nothing beyond the Time laid in the Demise, it proves nothing as to who *occupied the Premises*, and *during what Time* they were occupied, or the *Value of the Profits*, all these must be proved, (as they were in the present Case) but so long as the Judgment stands, it proves the Possession of the Nominal Plaintiff during the Term laid in the Ejectment; therefore upon Principles, and that this Point may be settled, we are all unanimous in Opinion, that the Plaintiff proved what was sufficient,

Variance.

Eggleton *against* Seneff, Bail for Curphey. Hilary
6 Geo. 2.

ORIGINAL Action brought in inferior Court against Defendant by the Name of *Curphey* removed by *Habeas Corpus* into the Common Pleas, and Bail put in by that Name. Plaintiff declares against Defendant by the Name of *Scurphee*, and recovers, and after Judgment brings an Action of Debt on the Recognizance, and sets out a Recovery against *Curphey*; to which Defendant pleads *Nul tiel Record*. Plaintiff replies a Record of a Recovery against him by the Name of *Scurffee*. Judgment for Defendant upon *Nul tiel Record*.

Thompson *against* Simmons. Easter 6 Geo. 2.

DARNAL moved to set aside the Verdict, the Record of *Nisi prius* differing from the Issue-Book delivered, the Defendant's Name being inserted in the Paper-Book, in joining Issue, instead of Plaintiff's; but in the Record Plaintiff's Name was inserted, and the Issue properly joined; but two Issues being joined, and a general Verdict found for Plaintiff, Court refused to make any Rule.

Rye *against* Crossman. Trinity 7 & 8 Geo. 2.

RULE was made to shew Cause why the Verdict should not be set aside; the *& similiter* being left out in the Issue delivered, but inserted in the Record of *Nisi prius*, it was insisted for Plaintiff, that it was amendable; but the Court were of Opinion, that no Statute of *Jeofails* extends to it, that it is a material Variance, and therefore

fore the Rule was made absolute, Defendant having relied upon the Variance, and made no Defence upon Trial; but by Consent the Cause to be tried the Sitting after Term. *Chapple* and *Eyre* for Plaintiff; *Baynes* for Defendant.

Wreathock, Attorney, *against* Bingham. Easter
8 Geo. 2.

THIS was an Action brought by the Indorsee upon a promissory Note, and in the Issue delivered, the Name of the Indorfor was omitted thus (*he the said indorsed*) and not (*he the said A. indorsed.*) In the Record of *Nisi prius* the Indorfor's Name was inserted. Defendant made no Defence upon Trial, but insisted that this was a material Variance, and moved to set aside the Verdict, which was ordered on hearing Council on both Sides. *Wright* and *Hawkins* for Defendant; *Eyre* for Plaintiff.

Shorter *against* Helbutt. Hilary 9 Geo. 2.

URLIN moved to set aside the Verdict for a Variance between the Declaration and Issue delivered, insisting upon the Variance as material, and that no Defence was made upon Trial. In the Declaration Plaintiff was called *John John Shorter*, and in the Issue delivered to Defendant (a Prisoner in the *Fleet*) Plaintiff was called *John Shorter*. Motion was denied.

Johns *against* Smith. Mich. 10 Geo. 2.

UPON a Motion to set aside the Verdict for a Variance between the Issue-Book delivered and the Record of *Nisi prius*, which Variance was, that in the first Count in the Issue-Book it was alleged that Plaintiff was indebted to Plaintiff, and in the Record of *Nisi prius* the Mistake was rectified without proper Leave; and it was alleged, that Defendant was indebted to Plaintiff. The Action was Case upon several Promises, and the Parties Names were rightly placed in the Remainder of the first Count, and in all the other Counts; and the Court held the Variance not to be material to the Point in Issue, and therefore refused to set aside the Verdict. *Daniel against Mears* in this Court. Mich. 5 Geo. 2. *Belfield* for Defendant; *Chapple* for Plaintiff.

Venue and Venue Facias.

Cole *against* Gouing. Mich. 6 Geo. 2.

AFFIDAVIT to change a *Venue* was penned, that the Promises in the Declaration (if any such were made) were made in *Sussex*, and not in *London*, &c. held insufficient, and not agreeable to the common Form, which is, that Plaintiff's Cause of Action (if any such he hath) did arise, &c.

Cowling *against* Reynoldson.

BARNES moved to change the *Venue* from *London* into the County of the City of *York* upon the common Affidavit. Denied *per Cur'* as unprecedented. He then prayed it might be changed into the County at large (*York*); which was also denied *per Cur'*, because that is not the true County where the Cause of Action did arise.

Herbert *against* Shawe.

CHAPPLE moved to change the *Venue* from *Cumberland* into *Lancashire*, which being a County Palatine, the Motion was denied.

Anger *against* Wilkins.

THIS was an Action on the Case for several Sets of scandalous Words spoken of Plaintiff by Defendant. Plaintiff on the Trial obtained a Verdict, and the Damages were found entire, though some of the Words were not actionable. *Belfield* moved for a *Venire facias de novo* on Payment of Costs, that Plaintiff might sever his Damages according to an ancient Rule of Court; which was granted by the Court. *Eyre* for Plaintiff.

Hardris *against* Sandell. Mich. 7 Geo. 2.

A Rule to change the *Venue* discharged, Defendant having had Time by a Judge's Order to plead, consenting to plead an issuable Plea, and to take Notice of Trial within Term. *Chapple* for Plaintiff; *Baynes* for Defendant.

Singleton *against* Lacey.

A Rule to change the *Venue* discharged. Defendant having summoned Plaintiff before a Judge for Time to plead, though the Summons was discharged, and no Order obtained. *Eyre* for Plaintiff; *Chapple* for Defendant.

Belshaw *against* Porter.

A Rule *Nisi* to change the *Venue* discharged, the Words of the Affidavit, whereupon the Rule was made, being that the Action did arise in the County of *Bucks*, and not in the County of *Middlesex*, or elsewhere out of the County of *Bucks*, to Defendant's Knowledge

Knowledge and Belief, which is not positive, and therefore insufficient.
Skinner for Plaintiff; *Camys* for Defendant.

Dent against Lambert. Hilary 7 Geo. 2.

DEFENDANT moved to change the *Venue* from *Middlesex* into *Suffolk*. Plaintiff shewed for Cause, that he was an Attorney of the Court, and therefore had a Right to lay his Action in *Middlesex*; but it appearing that Plaintiff had not declared in Person, but by *Nicholas Cotterell* his Attorney, the *Venue* was changed.

Jarratt against Dawson. Easter 7 Geo. 2.

THE *Venue* was laid in *Yorkshire* instead of *London* by Mistake of the Agent, contrary to the Instructions received from the Country Attorney his Client, as appeared by Affidavit; a Rule had been made in the Treasury to amend the Declaration, upon hearing the Agents on both Sides, Plaintiff consenting to give an Imparlance; but the Court discharged that Rule, as being without Precedent. Plaintiff after he has made his Election as to laying the *Venue* cannot afterwards change it.

Denton, an Attorney, against Lambert.

ERRE moved to change the *Venue* from *Middlesex* to *Suffolk* upon the Common Affidavit. *Skinner* shewed for Cause, that Plaintiff who sues an Attorney has a right to lay his Action in *Middlesex*; and so the Court held, though the Action was in Assault and Battery.

Welland, an Attorney, against Frument. Trinity
 7 & 8 Geo. 2. C. C. P. 132. 145

PLAINTIFF sued Defendant by *Capias*, and not by Attachment of Privilege, and laid the Action in *Middlesex*. Defendant moved to change the *Venue*; Plaintiff insisted, that in Right of his

his Privilege as an Attorney, the *Venue* ought not to be changed; but Court were of Opinion that Plaintiff having declared as a common Person, and not as upon an Attachment of Privilege, the *Venue* must be changed. *Wright* for Plaintiff; *Baynes* for Defendant.

Castle *against* Boucher. Hilary 8 Geo. 2.

SKINNER moved to change the *Venue* from *Middlesex* into *Herefordshire* in an Action for scandalous Words. The Words were not mentioned in the Affidavit, but only that if such Words were spoken as in the Declaration, they were spoken in *Herefordshire*, and not in *Middlesex*. Held bad.

Smith *against* Haward. Easter 8 Geo. 2.

THIS was an Action brought for several Sets of scandalous Words, and the Damages were found entire. Defendant moved in Arrest of Judgment, the last Set of Words, *viz. This Child can hang you*, not being actionable; and upon hearing Counsel on both Sides, the Judgment was arrested; but a *Venire facias de novo* was awarded according to an ancient Rule of Court. Vide *Praxis utriusque Banci*, fol. 22. *Darnal* for Defendant; *Birch* for Plaintiff.

Wood *against* Winch.

BIRGH moved the last Day of the Term to change the *Venue*. *Per Cur'*: It cannot be now done, as there is not a Day left in the Term for Plaintiff to shew Cause.

Ward *against* Coclough. Trinity 8 & 9 Geo. 2.

RULE to change the *Venue* discharged, the Action being brought upon a promissory Note. *Skinner* for Plaintiff; *Eyre* for Defendant.

Bickley against Mackerell.

A Rule was made to change the *Venue* from *Norfolk* into *London*. *Comyns* for Defendant, who queted *Sir Samuel Gerard's Case*, *Salk.* 670. to shew that a Rule had been made to remove a *Venue* from a County at large into *London*.

Crafter against Cockerell. Hilary 9 Geo. 2.

URLIN moved to change the *Venue* into *Durham*, or an adjacent County where the Affizes are held twice a Year, upon the common Affidavit. The Motion was denied.

Paul against Young.

Held upon hearing Council on both Sides, that Defendant cannot regularly move to change the *Venue* after taking out a Judge's Summons for Time to plead. *Wright* for Plaintiff; *Belfield* for Defendant.

Lutwich against Eames. Easter 9 Geo. 2.

EYRE moved to change the *Venue* from the County of *Cumberland* to the City of *London* upon the common Affidavit, and obtained a Rule to shew Cause, which was afterwards made absolute. Vide *Bickley against Mackerell*, *Trin.* 8 & 9 Geo. 2.

Spooner against Milward, Com' Staffr.

THE *Venue* in the Declaration was laid at *Leek*, and not at *Leek* in the County aforefaid. Defendant demurred, and shewed the Want of a proper *Venue* for Cause. Plaintiff joined in Demurrer; and upon Argument the Court gave Judgment for Plaintiff. It is sufficient, according to the Course of this Court, to lay the *Venue* at *Leek*, which has Reference to the County in the

Margent. And since by Act of Parliament the *Venire Facias* is *de corpore Comitatus*, it is not necessary that any particular Place in the County be laid. *Belfield* for Plaintiff; *Skinner* for Defendant.

Lutwidge *against* Wilcox. Trinity 10 Geo. 2.

On a Policy of *CHAPPLE* had obtained a Rule to shew Cause *Insurance.* why the *Venue* should not be changed from *Cumberland* to the City of *Bristol*, or *Somersetshire*, (the adjacent County) at Plaintiff's Election. *Bootle* shewed for Cause, that the Rule was unprecedented, and against the Course of the Court; for though in an Action on Policy of Insurance the *Venue* may be changed, yet it cannot be to a City or adjacent County at Plaintiff's Election, which Cause was allowed, and the Rule discharged.

Lord Griffin *against* Buckby.

Action Scandalum *WYNNE* moved to change the *Venue*. Denied. The *Venue* is never changed in Actions for *Scandalum Magnatum*.

Box *against* Read and another.

AFFIDAVIT of one of the Defendants held sufficient to found a Motion to change the *Venue*.

Cooper *against* Mills, an Attorney. Mich. 10 Geo. 2.

Defendant insisted in Right of his Privilege as an Attorney, that the *Venue* ought to be laid in *Middlesex*, his Duty requiring his Attendance at *Westminster*; but *per Cur'*, Defendant hath no such Privilege. Plaintiff may lay his Action where he pleases, and if Defendant applies to change the *Venue*, it must be upon the usual Affidavit. *Umlin* for Defendant; *Bootle* for Plaintiff.

Newby

Newby *against* Burton.

DEFENDANT having moved to change the *Venue* upon the common Affidavit, it was objected that he had obtained Time from a Judge to perfect his Bail, and therefore the Motion came too late; but the Objection was over-ruled. After an Order for Time to plead, pleading an issuable Plea, Defendant cannot move to change the *Venue*; but it has never been held so after Time to perfect Bail. *Wright* for Defendant; *Eyre* for Plaintiff.

Rice *against* Vinall. Hilary 10 Geo. 2.

THE Declaration was on a promissory Note and other Counts. Defendant moved on the common Affidavit to change the *Venue*, and obtained a Rule to shew Cause, which was discharged, it appearing by Affidavit that Plaintiff's Cause of Action was upon a promissory Note. *Eyre* for Plaintiff; *Chapple* for Defendant.

Howse *against* Haselwood.

IN the Margent stood the Word *Norfolk*, in the Body of the Declaration the *Venue* was laid at the City of *Norwich* in the County of the same City, throughout. Plaintiff executed a Writ of Enquiry of Damages directed to the Sheriffs of the City of *Norwich*. Defendant moved in Arrest of Judgment, and obtained a Rule to shew Cause, which was discharged. Had no *Venue* been laid in the Body of the Declaration, Reference must be had to the Margent; but where a proper *Venue* is laid in the Body of the Declaration, the Word in the Margent shall not vitiate it, the County in the Margent will help, but not hurt. *Eyre* and *Comyns* for Plaintiff; *Wright* for Defendant.

Girdler, Serjeant at Law, *against* Wathews. Hilary

11 Geo. 2.

For Words. **D**efendant moved to change the *Venue* from *Middlesex* into *Staffordshire* upon the common Affidavit. Plaintiff insisted, that in Right of his Privilege the Cause ought to be retained in *Middlesex*. Plaintiff had sued by Original; and therefore the *Venue* was changed. *Parker* for Defendant; *Skinner* and *Comyns* for Plaintiff.

Sheers *against* Bartlett.

THE Word *London* was in the Margent, and in the Body of the Declaration the *Venue* was laid at *Oxford*; after Issue joined, and Notice given in *London*, Plaintiff moved to amend by making the *Venue* in the Body of the Declaration agreeable to the Margent, which the Court offered to grant upon Payment of Costs; but Plaintiff not submitting to pay Costs, the Rule to shew Cause for the Amendment was discharged. Plaintiff will venture to proceed in *Com' Oxon*. *Skinner* for Plaintiff; *Price* for Defendant.

Sheers *against* Bartlett. Trinity 11 & 12 Geo. 2.

LONDON was in the Margent, but in the Body of the Declaration the *Venue* was laid at *Tame* in *Oxfordshire*. Plaintiff tried his Cause in *Oxfordshire* and obtained a Verdict, and Defendant moved in Arrest of Judgment, insisting that the *Venire Facias* being awarded to the Sheriffs in the Plural Number must signify the Sheriffs of *London*, and the Court must take Judicial Notice that there is but one Sheriff of *Oxfordshire*. A Rule to stay the Entry of Judgment upon the Verdict was made, and afterwards discharged upon hearing Council. *Per Cur'*: Had there been no proper *Venue* in the Body of the Declaration, the Margent must have been resorted to; but in this Case the Margent must be rejected; the Word *Sheriffs* for *Sheriff* is amendable; and here the *Venire Facias* is returned by the Sheriff of *Oxfordshire*. *Parker* for Defendant; *Skinner* for Plaintiff.

Penrice

Penrice *against* Jackson.

THE Sheriffs of the City of *Worcester* had returned to the *Venire Facias* the Names of 24 Jurors only, though 48 at least are required by the Statute 3 *Geo.* 2. The Sheriffs, before the *Habeas Corp' Jurat'* was returned perceiving their Mistake, returned to it the Names of 48 Jurors, and Plaintiff proceeded to Trial. Defendant made no Defence, but moved to set aside the Verdict. *Per Cur'*: Though imperfect returns may be helped by the Statute, yet here the Fault is in the Matter of Fact; the Return of the *Habeas Corp'* must be of the same Jurors summoned on the *Venire Facias*. The Rule to set aside the Verdict was made absolute. *Parker* for Defendant; *Eyre* and *Skinner* for Plaintiff.

Davies *against* Grace, Attorney. Mich. 12 *Geo.* 2.

MOTION to change the *Venue* from *Middlesex* into *Surry*. Plaintiff insisted Defendant ought to pay for a new Bill; but *per Cur'*, it is no more than in other Actions, a new Original is necessary in all Cases. The *Venue* must be changed without Costs. *Kettlebey* for Defendant; *Skinner* for Plaintiff.

Ellis *against* Chorke.

RULE to change the *Venue* discharged, Defendant having taken out a Judge's Summons for Time to plead.

Watson *against* Willis.

DRAPER shewed Cause against Rule to change the *Venue*, and said it was on a promissory Note, and no other Count in the Declaration. *Cur'*: It is good Cause and settled Practice. *Kettlebey* for Defendant.

Thomeur against Rand. Hilary 12 Geo. 2.

MOTION made the last Day of the Term to change the *Venue*, upon Affidavit of Notice, denied, because Plaintiff can have no Opportunity of shewing Cause.

Note; The Writ was returnable the second Return of the Term, and Declaration delivered *February* 8, so that Defendant's Attorney could not procure an Affidavit from his Client in the Country so as to move sooner.

Bryan against Smith. Easter 12 Geo. 2.

GAPPER for Defendant moved in Arrest of Judgment, a Blank for the Return of the *Venire Facias* being left in the Record of *Nisi prius*, and obtained a Rule to shew Cause, which on hearing *Draper* for Plaintiff, was discharged. It is constant Practice to leave a Blank; the Award of the *Venire Facias* is no Part of the Issue, and is amendable by the *Venire Facias* itself.

Gouthouse against Blaxland.

RULE for changing *Venue nisi*, discharged, the Defendant having obtained a Judge's Order for Time to plead. (Chief Justice absent.) *Wright* for Plaintiff; *Comyns* for Defendant.

Winter against South, Attorney. Trinity 13 Geo. 2.

A Rule to change the *Venue* from *Middlesex* into *Surry*, upon the common Affidavit, without Costs. Vide *Davies against Grace*, Attorney, *Mich.* 12 Geo. 2. *Cooper against Mills*, Attorney. *Mich.* 10 Geo. 2. *Draper* for Plaintiff; *Wright* for Defendant.

Blackstock *against* Payne. Mich. 13 Geo. 2.

RULE to shew Cause why *Venue* should not be changed. Plaintiff objected; that Defendant had obtained a Judge's Order for an Imparance, and could not afterwards move to change the *Venue*. But the Objection was over-ruled. This is not Matter of Favour (like Time to plead) but of Right; the Judge would not have ordered an Imparance, if Defendant had not been entitled to it by Law. Rule absolute. *Skinner* for Plaintiff; *Agar* for Defendant.

Fray *against* Smith.

Defendant moved in Arrest of Judgment after a Verdict, the *Venire* being awarded Twelve good, &c. and a Rule *Nisi* granted, which was afterwards discharged, on shewing Cause upon an Affidavit that the Words in the *Venire* itself were Twelve free and lawful Men; and the Court being of Opinion, that the Word *Good* in the Award of the *Venire* ought to be rejected.

Maugir *against* Hinds. Hilary 13 Geo. 2.

RULE to shew Cause why the *Venue* should not be changed was discharged, it appearing that the Cause of Action was upon a Bill of Exchange only, and Plaintiff undertaking not to give Evidence upon any other Count in his Declaration, save that upon said Bill of Exchange. *Skinner* for Plaintiff; *Agar* for Defendant.

Warden, Attorney, *against* Norden.

RULE for changing the *Venue* discharged, Plaintiff being an Attorney, and entitled, because of his necessary Attendance upon the Court, to lay his Action in *Middlesex*. *Wynne* for Defendant; *Skinner* for Plaintiff.

Stoneham *against* Dent,

VENUE changed from *London* to *Middlesex*. *Agar* for Defendant; *Skinner* for Plaintiff.

Clarke *against* Sheppard, Trinity 13 & 14 Geo. 2.

Plaintiff sued out a *Venire facias*, whereupon the Common Paper was returned, this Writ and Return were filed, and a Writ of *Habeas Corpora Jur'* was issued forth. Plaintiff afterwards obtained a Rule for a Special Jury, as a Matter of Course; which Rule was discharged. After the *Venire facias* and Return filed, the Motion for a Special Jury comes too late, *Belfield* for Defendant; *Skinner* for Plaintiff.

Cook *against* Shone and others,

THIS was an Action brought against Defendants, Surveyors, &c. of *Westminster-Bridge*, for taking away and destroying Plaintiff's Timber to the Value of 500 l. by the Act of Parliament for building the said Bridge, Plaintiff is confined to bring his Action within six Months, and to lay it in *Middlesex*; by Mistake of *Gillman*, Plaintiff's former Attorney, who now absconds, the Action was laid in *London*, instead of *Middlesex*, and the Mistake was not discovered till after Plea pleaded and Issue joined; the Fact appeared to be committed on the 22d *August* 1739, and the Action to be commenced within the six Months. Plaintiff now moved for Leave to change the *Venue* from *London* to *Middlesex*; which was ordered, upon Payment of Costs. If the Amendment could not be made, Plaintiff must lose his Remedy; he is too late to bring a new Action. In an Action upon a Penal Statute, the Court probably would not interpose; but in the Case of a Remedial Law, the Amendment must be made. *Skinner* for Plaintiff; *Prime* for Defendant. 3 *Lev.* 347. *Bearcroft* against *The Hundred of Burnham*.

Richardson *against* Walker and others. Trinity 14 &
15 Geo. 2.

A Rule to shew Cause why the *Venue* should not be changed from *Cumberland* into *Lancashire*, was discharged. The *Venue* is never changed into a County Palatine. *Bottle* for Plaintiff; *Birch* for Defendant.

Lewis *against* Askham. Hilary 15 Geo. 2.

AGAR moved to change the *Venue* from *Yorkshire* into the City of *York*. Denied *per Cur'*.

Dennis *against* Fletcher.

RULE to shew Cause why the *Venue* should not be changed, was discharged, because before the Motion there had been a Judge's Summons for Time to plead, and an Attendance thereon, but no Order was produced. *Per Cur'*: It must be so, as the Practice stands at present, but shall end here. For the future, a Judge's Summons, or Order for Time to plead, shall be no Bar to a Motion to change the *Venue*. *Prime* for Plaintiff; *Willes* for Defendant,

Davis *against* Jordan. Easter 15 Geo. 2.

WILLES, for Defendant, moved to change the *Venue* from *London* into *Kent*, the adjacent County, upon Affidavit that the Cause of Action accrued within the City of *Canterbury*. Denied.

Hayward *against* Wells. Trinity 16 Geo. 2.

VENUE changed from *London* into *Berks*, though the Motion for the Rule to shew Cause was not made till the last Day of last Term, the Writ was returnable the second Return of that Term, and the Declaration delivered so late that Defendant could not move it sooner. *Gapper* for Plaintiff; *Draper* for Defendant.

Rickaby against Wilton, Esquire. Mich. 16 Geo. 2.

THIS ACTION was brought by Plaintiff, an Inn-keeper at *Appleby* in *Westmoreland*, against Defendant, one of the Knights of that Shire, for a large Demand for Wine, &c. provided at the last Election. Defendant moved, upon the Common Affidavit, to change the *Venue* from *Yorkshire* into *Westmoreland* (where the Assizes are held but once a Year.) It appeared that one of Plaintiff's Witnesses was going to *Ireland*, and would not return for two Years; and that Plaintiff's Creditors, of whom he had bought Wine, &c. were very pressing upon him. *Per Cur'*: Upon these Occasions, the Court acts according to Discretion, and the general Rules of Justice, and the particular Rules of Practice in being. The Practice is settled, that a *Venue* cannot be changed into *Hull*, *Canterbury*, &c. because it is not known when an Assizes will be held there; nor into the City of *Worcester* or *Gloucester*, out of the County at large; because the Assizes for the City and for the County at large, are held at the same Place. In *Easter* or *Trinity* Term the *Venue* may be changed into a City or County, where the Assizes are held but once a-Year, as *Bristol*, *Cumberland*, &c. In *Michaelmas* and *Hilary* Term there is no certain Rule, but the Court should change the *Venue* then, if it can be done without manifest Inconvenience. This Action is laid in the next County to that where the Cause of Action accrued; had it been laid in *Middlesex*, or any distant County, the Court probably would not have obliged Defendant to bring his Witnesses (some of whom appeared to be aged and infirm) so far; but in this Case, it would be Injustice to deny Trial at next *Yorkshire* Assizes. The Rule to shew Cause why the *Venue* should not be changed, was discharged. *Prime* and *Willes* for Plaintiff; *Skinner* and *Boyle* for Defendant.

Jeremain against Ridley, in Trespass, for taking and carrying away Goods, a Transitory Action. Easter 16 Geo. 2.

RULE made to shew Cause why the *Venue* should not be changed. *Draper* for Defendant.

The

The Duke of Bedford *against* Bray. Mich, 17 Geo. 2.

RULE to shew Cause why the *Venue* should not be changed, was discharged, the Declaration containing, *inter alia*, a Count on a Promissory Note; Plaintiff consenting, at the Peril of a Non-suit, to give Evidence on the Promissory Note. *Prime* for Plaintiff; *Skinner* for Defendant.

Bradley *against* Adey. Mich. 18 Geo. 2.

ACTION of Covenant on Deed for Non-payment of Rent for Lands in *Kent*, laid in *Middlesex*. Motion to change the *Venue* denied. If local Defendant will have Advantage, if transitory, the *Venue* cannot be changed, the Action being on a Specialty. *Wynne* for Defendant.

Everest *against* Sanfum, in Case, for a Deceit by warranting an unsound Horse. Hilary 19 Geo. 2.

Defendant moved to change the *Venue*, on the Common Affidavit. Plaintiff's Counsel insisted, that in Actions for Deceit, Escape on mesne Process and Custom of the Realm, the *Venue* cannot be changed; and to that Purpose quoted 1 *Sydesf.* 87. N^o 3. *Trials per Pais*, (third Edition) fol. 90, 91, 92. *Attorney's Practice in the King's Bench*, fol. 79. *History Com' Pleas*, fo. 68. The Court held, that the *Venue* may be changed in all Actions in their Nature transitory, except in Cases of Privilege, Specialty, Promissory Note or Bill of Exchange. Rule absolute to change the *Venue*. *Skinner* for Defendant; *Prime* for Plaintiff.

Note; Deceit in Matter of Title to Land is Action on the Case. *Kide Fitz-herbert's Natura Brevium*,

Mayor, &c. of the Borough of Leicester, *against*
Green, alias Smith. Special Action on the Case.
Trinity 19 & 20 Geo. 2.

RULE made absolute to change the *Venue* from *London* into *Leicestershire*, upon reading the Declaration, without the usual Affidavit, it appearing, that the Action was brought on a Custom of the Borough of *Leicester*, against Defendant, for exercising the Trade of a Watchmaker within that Borough, not being a Freeman, and not on a Market or Fair Day. *Note*; The Borough of *Leicester* is within the County at large. There is a Commission of Gaol-Delivery every Assizes for the Borough, but no Commission of *Nisi prius*. *Willes* for Defendant; *Bootle* for Plaintiff.

Litson *against* Cooke. Action on a Promissory Note,
and other Counts. Hilary 21 Geo. 2.

RULE to shew Cause why the *Venue* should not be changed, discharged, Plaintiff undertaking to give Evidence on the Promissory Note. *Vide Duke of Bedford against Bray, Mich. 17 Geo. 2.* *Agar* for Defendant; *Draper* for Plaintiff.

Herbert *against* Flower and others, in Trover. Trin.
24 & 25 Geo. 2.

Defendants, after a Rule to shew Cause why the *Venue* should not be changed, and before it was made absolute, put in their Plea. The Court held, That this Plea by Inadvertence is no Waiver of the Rule; gave Defendants Leave to withdraw the Plea, on Payment of Costs; and made the Rule absolute to change the *Venue*. *Bootle* for Defendants; *Prime* for Plaintiff.

Hunter *against* Gray ; Smith *against* Gray. Trin.
28 Geo. 2.

RULES to shew Cause, why the *Venue* should not be changed from *London* into *Essex*, discharged ; Defendant by a Judge's Order for Time to plead, having consented to rejoin *gratis*, and take Notice of Trial at the Sitting after this Term in *London* ; though the having obtained an Order for Time to plead, generally speaking, is no Hindrance to the Changing of a *Venue* ; yet if Defendant will consent to take Notice of Trial in the County where the Action is originally laid, that Consent shall bind him ; had the Judge been informed of the Defendant's Intention to move to change the *Venue*, he would have made his Order without Prejudice to such Motion. *Draper* for Defendant ; *Davy* for Plaintiff.

Davies, Widow, *against* Parry Esquire, late Sheriff of Monmouthshire, for an Escape. Hilary 29 Geo. 2.

Plaintiff shewed for Cause against the common Rule for changing the *Venue* from *Middlesex* into *Monmouthshire* unless Cause, That Mr. *Chatmayd* who was Under-Sheriff to Defendant, is now Under-Sheriff, and ought not to have any Concern in returning the Jury Process. Rule absolute to change the *Venue*, but by Consent the Jury Process to be directed to and returned by the Coroners. *Hayward* for Defendant ; *Wilson* for Plaintiff.

Long, Gent. one of the Attornies, &c. *against* Baylies, Dr. in Physick. Trinity 32 & 33 Geo. 2.

ON a Motion to charge the *Venue* from *Middlesex* into *Worcestershire*, the Action in Right of Plaintiff's Privilege as an Attorney, was retained in *Middlesex*, though the Attachment of Privilege was a common Attachment into *Worcestershire*, not a *Testat* Attachment out of *Middlesex* into *Worcestershire*. *Nares* for Defendant ; *Davy* for Plaintiff.

Addenda.

Addenda.

Easter Term in the Second Year of the Reign of King George the Third.

NOTICE is hereby given, that from and after the last Day of this present *Easter Term*, 1762, no Record or Writ of *Nisi prius* will be received at any Sitting after Term in *Middlesex*, (in his Majesty's Court of *Common Pleas*,) unless the same shall be delivered to, and entered with the Marshal, within two Days after the last Day of every Term.

And that no Record or Writ of *Nisi prius* will be received at any Sitting after Term in *London*, unless the same shall be delivered to, and entered with the Marshal, the Day before the Day to which the Sitting in *London* shall be adjourned.

Hilary Term, in the Seventh Year of the Reign of King George the Third.

NOTICE is hereby given, That from and after the last Day of this present *Hilary Term*, every Rule to be made for the Sheriff of the County of *Middlesex*, and the Sheriff of *London*, to return Writs, or bring into Court the Body or Bodies of any Defendant or Defendants, will be made for such Sheriff and Sheriffs to return such Writs, and bring into Court the Body or Bodies of such Defendant or Defendants, within four Days next after Service thereof.

Canning *against* Davis. Easter 9 Geo. 3.

Plaintiff sued out *Lat'* which was to answer the Plaintiff, who sues as well in this Behalf for the King as for himself. Declaration was (the Plaintiff complains, *omitting the Words, who sues as well, &c.*) and held irregular. In this Case the Variance goes to the

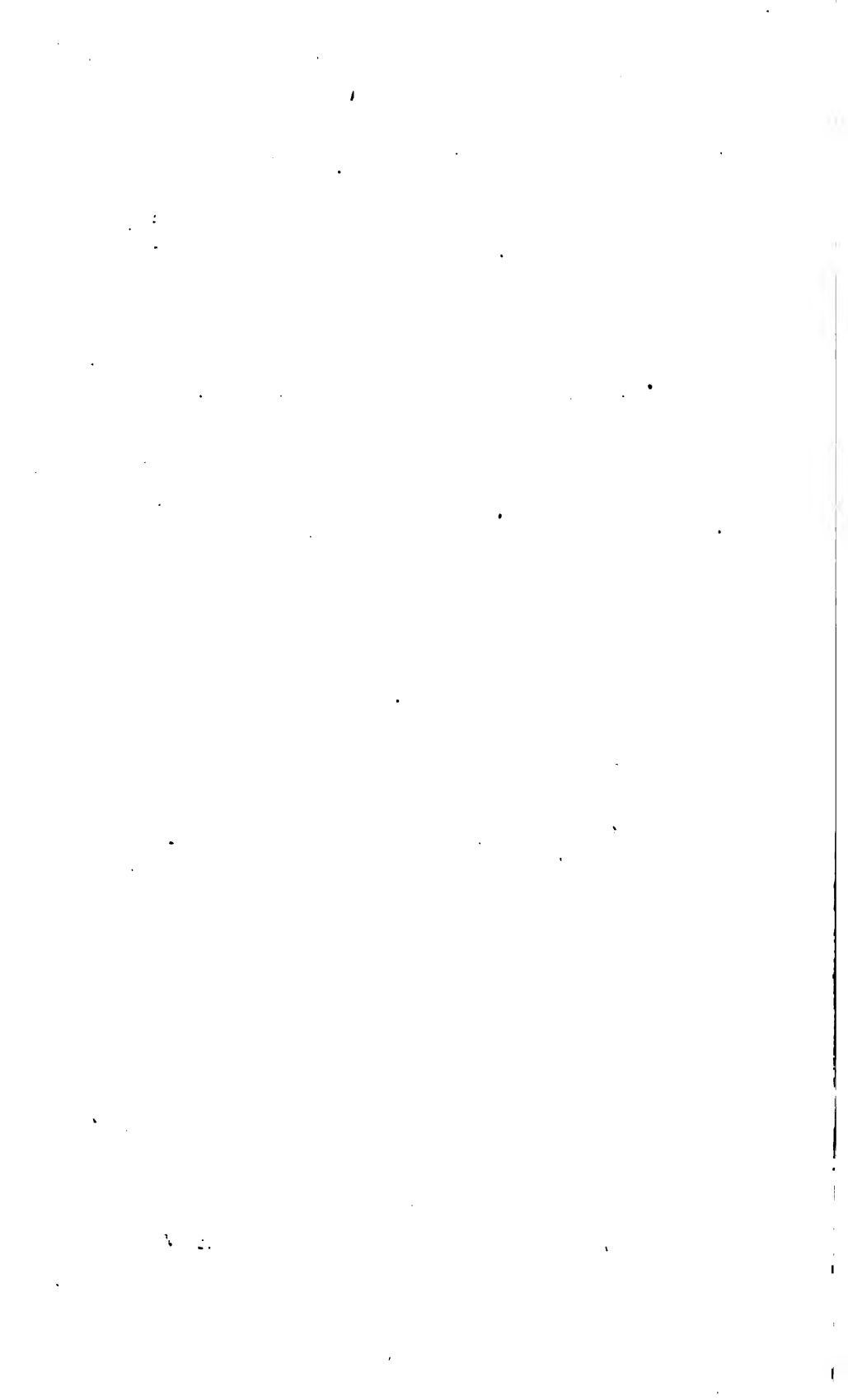
the Demand, Plaintiff may call himself Executor, or give himself a superfluous Description in the Process, and declare otherwise, and that would not hurt, for the Demand is still the same, but in this Case the very Nature of the Demand is altered; the Process importing a Demand to the King and the Plaintiff, and the Declaration importing a Demand to the Plaintiff only.

Mr. *Asburst*, for Defendant.

Mr. Solicitor General for Plaintiff.

Strange 1232, not necessary to describe the Plaintiff as Plaintiff, *qui tam* in the Process.

N. B. The Practice of the *Common Pleas* is now the same as settled in the *King's Bench*, by the Authority of the foregoing Case.



A F E W O M I T T E D C A S E S.

Attachment.

Stretch and his Wife *against* Wheeler. Easter
27 Geo. 2.

RULE for *Richard James*, to shew Cause why an Attachment of Contempt against him should not issue for his not attending as a Witness on Defendant's Part at last *Surrey Assizes*, pursuant to *Subpœna* served, and a sufficient Recompence tendered him, discharged. On shewing Cause it appeared, that, though *Richard James* was resident at *Lambeth Marsh*, and the Road from thence to *Kingston* (where the Assizes were held) extremely good, yet he was very weak and infirm, 80 Years old, and afflicted with an Asthma and Dropsy. His Apothecary attended at *Kingston* ready to make Oath (as now he did) that *Richard James* could not attend the Assizes without Danger of his Life. The granting of Attachments in these Cases is purely at the Discretion of the Court; Defendant may come at *Richard James's* Evidence by Application here, to have him examined before a Judge upon Interrogatories, or to the Court of *Chancery*, by Bill to perpetuate his Testimony. *Prime* for *Richard James*; *Wynne* for Defendant.

Jurisdiction.

Matthews *against* Holtam. Mich. 6 Geo. 2.

THIS was an Action of Debt brought for 20 s. for a Year's Rent: The Damages were laid 100 s. A Motion was made to stay the Proceedings, because the Action was beneath the Jurisdiction of the Court; but the Court refused to make any Rule, the Damages being laid as before-mentioned.

Downes *against* Nichols. Mich. 12 Geo. 2.

BIRCH moved to stay Proceedings, for that Plaintiff's Demand was only 6 s. 6 d. which by Affidavit appeared, but did not produce Declaration. *Cur'*: No Rule, because we never try the *Quantum* of Plaintiff's Demand by Affidavit.

Non-pross, Nonsuit, &c.

Hamp *against* Cuming. Easter 27 Geo. 2.

RULE to shew Cause, why Judgment as in Case of a Nonsuit discharged. Plaintiff had obtained Rules for Special Jury and View, in Pursuance whereof a View was had by four Jurors only; Plaintiff entered his Cause for Trial at last *Warwick Assizes*, and was ready to proceed, but Defendant refusing to consent, the Cause could not be tried for want of a View returned by six Jurors at least; Plaintiff has affected no Delay, 'twas not his Fault that the View was incomplete. *Prime* for Plaintiff; *Willes* for Defendant.

Notice.

Taylor *against* Oxley, in Case on Promise. Hilary 29 Geo. 2.

Judgment set aside without Costs for a Defect in the Notice of Declaration as to the Nature of the Action. The Words of the Notice were [*in an Action upon the Case*] generally, without further Addition; the Intent of the general Rule requiring Notice is, that Defendant should know what he was sued for. Actions on the Case on Contracts and for Torts are extremely various; the Notice should have expressed at least on Promise, or on several Undertakings and Promises. *Pool* for Defendant; *Willes* for Plaintiff.

Prisoners.

Prisoners.

Sherwyn against Bowes; Spinster. Easter 9 Geo. 2.

AFTER Judgment reversed by Writ of Error, Defendant had a *Superfedeas*; but before she was thereby discharged, she was charged with a new Declaration at Plaintiff's Suit, and upon Application to the Court was discharged by Rule from the new Declaration, and her *Superfedeas* was allowed. After her Discharge Plaintiff caused her to be arrested and held to Bail for the former Cause of Action; whereupon she moved the Court to be again discharged by *Superfedeas* upon entering a common Appearance; and upon hearing Counsel on both Sides, the Court was divided in Opinion. Lord Chief Justice and Mr. Justice Comyns looked upon the second Declaration to be no Charge, and that the Court took it so when a Rule was formerly made for her Discharge; and thereupon she had the Benefit of her *Superfedeas*, and that after the Judgment reversed and annulled, Plaintiff had a Right, if she thought fit, to bring a new Action. Mr. Justice Denton and Mr. Justice Fortescue were of Opinion, that after the Defendant had been discharged by Rule of Court, as to the second Declaration, she ought to be now discharged on entering a common Appearance, and that the Rule of Court amounts to the same Thing as a *Superfedeas*. No Rule. *Hawkins* for Defendant; *Skinner* for Plaintiff.

Superfedeas.

Roe against Whitehead. Hilary 17 Geo. 2.

Defendant, a Prisoner in the *Fleet*, after Judgment brings a Writ of Error, put in Bail thereon, and applied to be discharged by *Superfedeas*. Plaintiff's Counsel objected, that if the Writ of Error should be non-prossed for Want of transcribing the Record, the Bail would not be liable. But the Court held, that though the Record should not be transcribed, yet the Bail being bound to prosecute the Writ of Error with Effect, will be liable; and made the Rule for a *Superfedeas* absolute. *Agar* for Defendant; *Boote* for Plaintiff.

Grub' against Crick. Hilary 19 Geo. 2.

AFTER a *Supersedeas* ordered for Want of Plaintiff's proceeding to Judgment within three Terms after Declaration; and before Defendant could be discharged, the same Plaintiff caused him to be charged with a new Declaration; which the Court held regular, being for a different Cause of Action; and the Rule to shew Cause why a *Supersedeas*, notwithstanding the Declaration, was discharged. *Prime* and *Hayward* for Plaintiff; *Skinner* for Defendant.

Bell against Simpson. Trinity 26 & 27 Geo. 2.

Defendant in Custody for Want of Bail: The *Actiam* was for 40 *l.* Debt; the Declaration in a Plea that Defendant render to Plaintiff 40 *l.* which, &c. The Count single for 22 *l.* Rent, without any additional Count on a *Mutuuatus*, or otherwise, for the Residue of the 40 *l.* Now to prevent a *Supersedeas* (after the second Term from Delivery of Declaration expired) Plaintiff desired Leave to add a second Count, whereby to make his Declaration good from the Delivery, which is a Favour not to be granted. Matters of Amendment are purely at the Discretion of the Court. Had Bail been put in, they would have been discharged, and so must Defendant's Person be. A Count cannot be added after the second Term. Rule, That if Plaintiff consents to a *Supersedeas* within six Days after Term, he may amend, otherwise not. *Willes* for Plaintiff; *Poole* for Defendant.

T H E

T A B L E

O F

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Addenda.

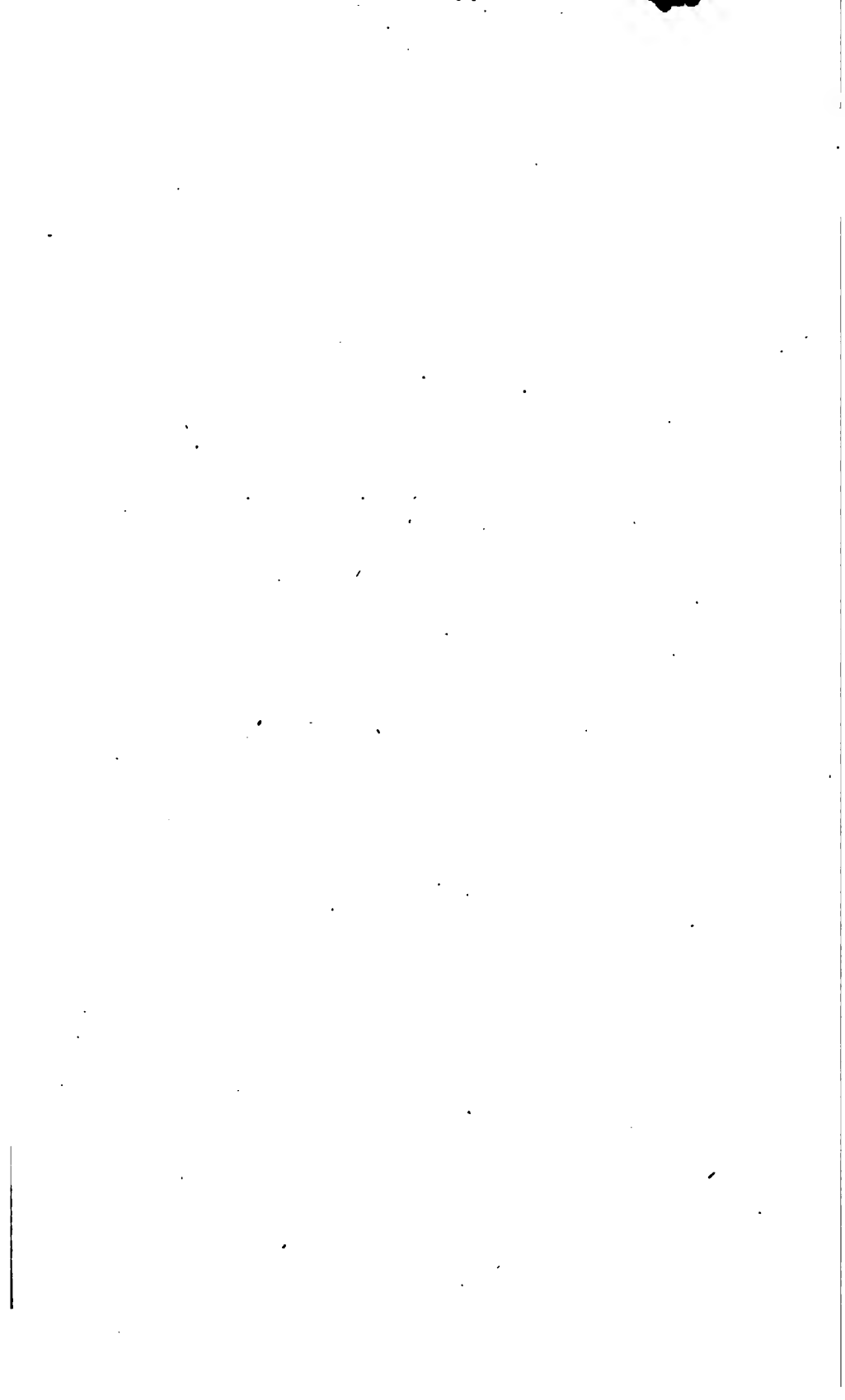
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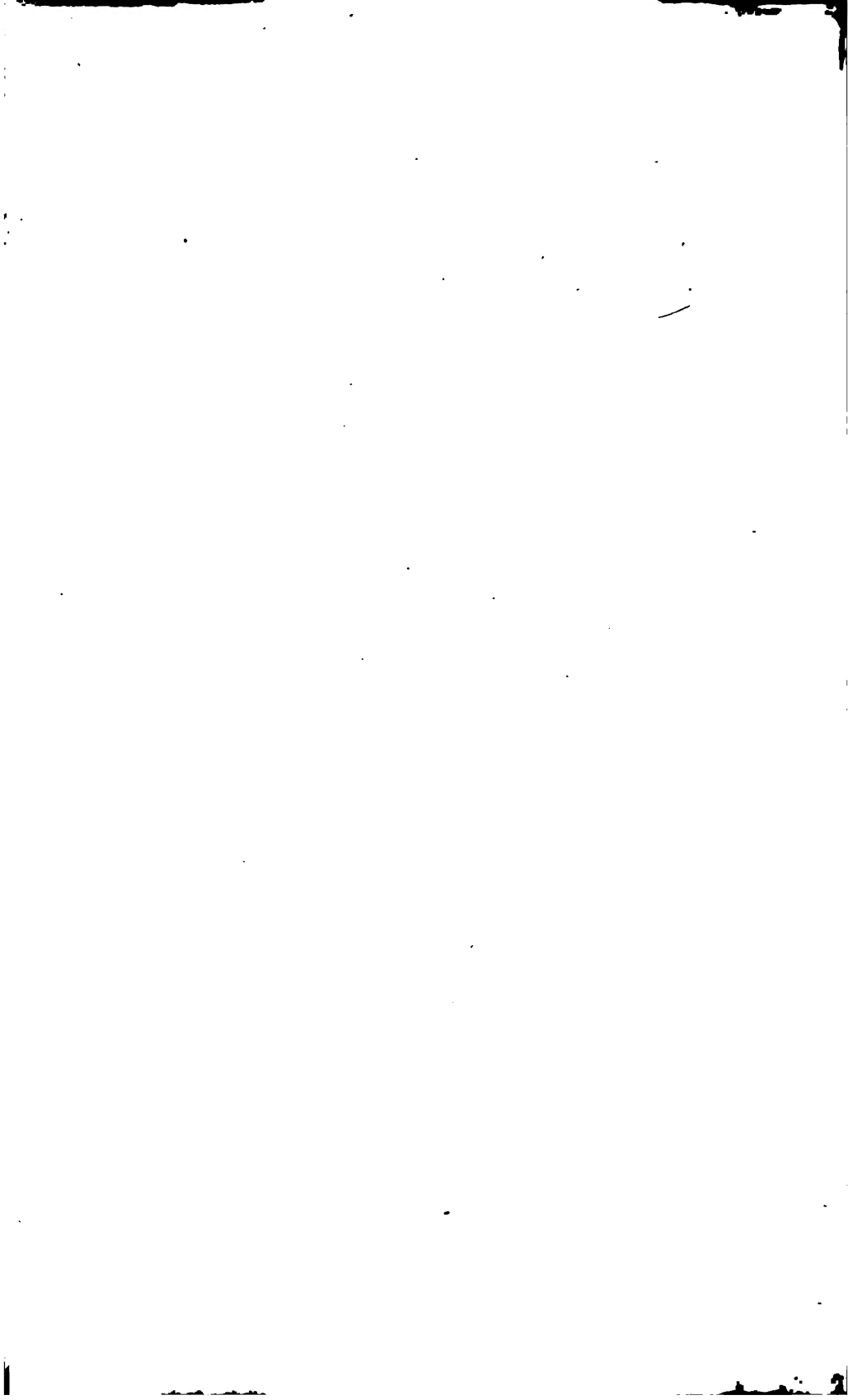
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